

**Response to Consultation Document: Debt  
Collection- draft OFT guidance for creditors,  
debt collectors, law firms and other  
businesses engaged in recovery of consumer  
credit debts**

**Issued by the Office of Fair Trading**

**June 2011**

## **1.0 Introduction**

- 1.1 Housing Rights Service welcomes this opportunity to respond to this OFT Consultation on draft guidance for creditors, debt collectors, law firms and other businesses engaged in recovery of consumer credit debts. We very much support the OFT's approach to strengthening the guidance to prevent unfair and improper debt recovery practices. Housing Rights Service has long called for further consumer protection within the debt collection industry to protect vulnerable clients in financial difficulty. Therefore we welcome the increased detail of the draft guidance and, in particular, preventing unfair business practices by emphasising the importance of allowing for reasonable repayment proposals to enable debtors to service their debt in a sustainable manner.
  
- 1.2 Although Housing Rights Service supports the proposals contained in this draft guidance and the work of the OFT in this area, we must point out that there is a need for sufficiently resourced and rigorous monitoring and enforcement procedures if the proposals are to be effective.

## **2.0 General comments**

Housing Rights Service supports the work of the OFT in improving the debt collection industry. We have continuing concerns that some debt collection agencies are failing to abide by the OFT Debt Collection Guidance, and welcome the OFT's actions against individual companies. Housing Rights Service advisers have experienced instances whereby creditors have failed to accept reasonable payment proposals, instead pressurising for large, unsustainable payments. Our advisers base their repayment proposals on the Common Financial Statement which clearly evidences the amount of disposable income a client possesses. By insisting on large repayment amounts, the creditors are placing the client at risk of further indebtedness.

We support the OFT's efforts to strengthen existing enforcement measures and believe this is vital to deter non-compliance. In order to ensure compliance with the guidance, it is imperative that any business found acting improperly are subsequently investigated and reprimanded.

Housing Rights Service also welcomes the level of detail in this draft guidance particularly in relation to physical/psychological harassment as well as mental capacity and mental health. We support the addition of new proposals included as we believe business practice in these area needs significant improvement. We believe it is imperative that businesses involved in debt collection have appropriate policies and procedures to make specific provision fair treatment of vulnerable debtors.

In responding to this consultation paper, our comments are focused on areas which we believe are pertinent to consumer protection. On this basis, we have tailored our response to cover issues we feel that are within our scope and expertise to comment on.

### **3.0 Specific Comments**

#### **Fair business practice**

Housing Rights Service agrees and welcomes the proposed overarching principles of fair practice: transparency, forbearance and consideration, proportionality and effective and appropriate policies and procedures. These are principles that all businesses should adhere to which allow indebted consumers to manage their way out of debt more effectively without additional pressure or unnecessary court action.

Housing Rights Service particularly welcomes the emphasis on ensuring businesses take appropriate account of any differences in law or court procedure

between jurisdictions. We have experienced instances whereby creditors are not aware of the difference in law between the jurisdictions and as a result are giving incorrect advice to clients. One common example is creditors citing the bailiff system which is not in place in Northern Ireland. Instead, the Northern Ireland Court Service Enforcement of Judgements Office deals with all Orders. This incorrect advice can place additional stress on clients who are already experiencing significant levels of stress due to debt as they are led to believe that there will be bailiffs coming to their home. Therefore, it is essential that all correct legal information is given to the client so they are able to understand their legal position.

Housing Rights Service also welcomes any proposal that would ensure that businesses do not levy charges unfairly and would urge the OFT to ensure that this proposal is adhered to through robust monitoring assessments. We have continuously highlighted the practice of unfair and excessive charges being levied on consumers in financial difficulty in various consultation responses. Through our mortgage debt advice work, Housing Rights Services has continued to witness unnecessary and excessive arrears charges being levied on consumers in arrears within the mortgage market. These charges unload further financial burden on consumers who are already struggling to clear existing debts. Charges also vary greatly and we believe they are often not reflective of true underlying costs, for example Housing Rights Service advisers have identified a creditor levying a £115.00 litigation monthly charge to a consumer in arrears. This fee is not proportionate and adds to the accumulation of arrears, making it extremely difficult for a consumer to manage their way out of debt. Businesses must ensure that all charges levied are reasonable, proportionate and transparent.

## **Physical/psychological harassment**

Housing Rights Service welcomes the addition of new proposals included within this section as we believe business practice in this area needs significant improvement. We particularly support the additional proposals (h-l) which highlight the importance of establishing affordable, sustainable repayment plans that will allow the debtor to repay his/her debt over a reasonable period of time. Housing Rights Service has experience of creditors failing to allow affordable payment amounts when a reasonable proposal has been made, even when evidenced through the Common Financial Statement that the client cannot afford larger repayments. We believe that this practice prevents our clients from managing their way out of debt, and can push them into further financial difficulty.

We support proposal (l) that highlights the need for creditors to suspend the active pursuit of recovery of debt for a reasonable period, to enable debt advisers to collect evidence and develop a repayment plan. Housing Rights Service has experienced instances whereby the creditor has failed to suspend court action, preventing our debt advisers to carry out a full investigation to put forward a reasonable repayment plan. This can have a detrimental impact on our clients, and can lead to further court adjournments to allow for more time to devise a repayment plan. This leads to the accrual of further court costs and additional stress on our clients.

The OFT must ensure that businesses are not unduly pressurising debtors by committing them to a short term repayment plan that is unrealistic. The emphasis must be on establishing a sustainable plan that allows the debtor to maintain their contractual obligations as well as manage their arrears without further indebting themselves. Housing Rights Service would urge the OFT to continue to be proactive in enforcing sanctions on businesses who do not adhere to proper business practices.

### **Deceptive and/or unfair methods**

Housing Rights Service welcome the additional proposals within this section which offer further protection for consumers. We particularly support proposal 3.8 (e) which states the example of refusing to negotiate with independent advice centres or debtor developing a repayment plan. It promotes the importance of communication between parties and “reasonableness” whereby a creditor should consider accepting the offer of reasonable repayment plans.

Housing Rights Service advisers have identified unfair practices whereby creditors are contacting debtors directly and bypassing their appointed representatives in relation to agreeing repayment proposals. We believe it is important that creditors liaise with appointed representatives when negotiating repayment proposals as our advisers are able to negotiate on the basis of the Financial Statement and availability of disposable income. Consumers are often under a lot of pressure and may agree to repayment proposals that are not sustainable, in an attempt to stop any further action. The importance of robust policies and procedures are evident in these instances to ensure creditors are following correct procedure when dealing with debtors and/or their appointed representatives.

### **Statute barred debt**

Housing Rights Service welcomes the additional section highlighting and explaining the legal position in NI. In our experience, we have identified creditors who have incorrectly advised our clients citing legal procedures that apply in England and Wales but do not apply to NI. It is imperative that all businesses involved in debt collection ensure the appropriate law is applied to the various jurisdictions in the UK.

## **Exchange of accurate data between businesses involved in debt recovery**

Housing Rights Service believe this section is a positive addition as our advisers have had experience of creditors not responding in a timely manner to requests for documentation/information. This impacts on the work Housing Rights Service advisers are doing as they are trying to build a case and develop a sustainable repayment plan under often pressurised time scales. This may also affect advisers if they have an impending court date as they are unable to obtain relevant documents before the court date. This can lead to an unnecessary adjournment and the further accrual of court fees so therefore it is crucial that creditors are able to respond to requests within a reasonable time frame.

## **Mental capacity and mental health**

Housing Rights Service has experience of dealing with vulnerable clients experiencing mental health issues and therefore welcomes the additional section dealing with consumers with mental incapacity and/or mental health issues. However, whilst we welcome the reference to the protections provided to consumers under the Equality Act 2010, we wish to highlight that this Act does not apply to NI. We would encourage the OFT to liaise with the Equality Commission for Northern Ireland to ensure that that the position for consumers in Northern Ireland is understood and accounted for within the guidance.

Consumers who are in financial difficulty and have mental health/capacity issues are particularly vulnerable and it crucial that debt collection businesses take account of this and act in a fair and appropriate manner. Our clients often have multiple debts and the stress of financial difficulty can have a detrimental impact of their mental wellbeing. Housing Rights Service is increasingly seeing evidence of cases where client's mental health has exacerbated as a result of increasing financial difficulty and pressure from creditors. As a result of this, we very much support the emphasis on ensuring that all businesses have policies and

procedures in place to make specific provision for the fair and appropriate treatment of debtors with mental health/capacity issues.

Although there are practical steps that businesses can take when dealing with mental incapacity and/or mental health issues contained in Annex E, Housing Rights Service would urge the OFT to take a proactive approach and work with debt collection businesses to ensure they have robust policies and procedures in place.

### **Enforcement powers and principles**

Housing Rights Service supports the OFT's commitment to ensuring fair, effective and proportionate enforcement however it is important that OFT are proactive in identifying non-compliance with this guidance. It is crucial that all businesses involved in debt collection are monitoring on a regular basis and assessed to ensure they meet the required standards. We agree that each case should be taken on a case by case basis, and action determined on the potential harm to individuals ensuring that consumer protection remains the key priority. Consumers in financial difficulty often have multiple debts and are under a great deal of pressure to meet their repayments, so it is important debt collection businesses act in a fair and appropriate manner.

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### **For further information contact:**

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## Appendix

Housing Rights Service was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland. We believe everyone has the right to a decent safe affordable home. Our services include:

- Providing a housing advice line
- Undertaking advocacy and legal representation on behalf of people with housing problems
- Delivering a specialist Mortgage Debt Advice Service on behalf of the Department for Social Development
- Providing online advice through our award winning website [www.housingadviceNI.org](http://www.housingadviceNI.org) and an email advice service
- Providing a specialist housing advice service within the prisons
- Delivering a skills and knowledge based training programme
- Producing information resources materials
- Supporting (In partnership with Citizens Advice and AdviceNI) generalist advice agencies to deliver high quality housing in their local communities
- Providing client based commitment to influence the development of relevant public policy and legislation
- Providing practical advice and assistance at court for possession proceedings and undertaking preventative policy work through our Preventing Possession Initiative.

All our services are delivered throughout NI and focus on the key areas of preventing homelessness; accessing accommodation; tackling poor housing conditions and affordability.

Funding for our work comes from a range of different sources. Our core services are funded by the Housing Division of the Department for Social Development NI.