

OFT (Office of Fair Trading) Debt Management Guidelines

As Licensed debt management advisors, we adhere to the OFT guidelines

OFT information leaflets and reports can be ordered free of charge on 0870 60 60 321. You can also order OFT publications online, and find advice and information on consumer rights and on the work of the OFT at www.offt.gov.uk

© Crown copyright 2001

PART I

Introduction

The Office of Fair Trading (OFT) issued general guidance to holders of, and applicants for, consumer credit licences in February 2001. In so doing, OFT indicated its aim to follow this by further guidance for specific market sectors where problems have been identified or where a more detailed consideration of particular market circumstances would be helpful. This guidance, on debt management, is the first of the series of sector-specific guidance.

Scope of the guidance

Advice to consumers (also referred to as 'clients') about debt problems has for many years been provided free by Citizens Advice Bureau, independent money advisers, Consumer Credit Counselling Service, National Debtline and others. Since the mid 1990s fee charging debt management companies ('DMCs') have also entered the market. A number of concerns about the conduct of some DMCs have been brought to the attention of the OFT by consumers, consumer bodies, the credit industry and others. For this reason guidance for this business sector was identified as a priority.

3) The debt management services covered by this guidance consist of all or any of the following when provided to debtors who are consumers (i.e., those acting for purposes outside their business) or individuals under consumer credit agreements:

I advice on how to restructure debts, how to alter debt repayments or how to achieve early resettlement of debts;

I contacting creditors in order to make any of the above arrangements (whether that contact amounts to 'negotiation' or not);

I providing a facility for the debtor to make a single repayment which is then distributed on his behalf to his creditors; and

I reviews of the debtors' financial circumstances and/or payments.

The guidance has been developed and written with DMCs in mind. But the principles that underlie its content, e.g. the need for transparency about the service that is being provided, keeping the consumer informed and giving advice which is in the consumer's best interests, apply equally to those who provide advice for no direct charge. Where the guidance is relevant to the 'free' sector, e.g. much of the material in the section on 'Advice' it, therefore, also applies to that sector.

The Guidance is not primarily intended to cover credit repair services or advice and assistance with individual voluntary arrangements or personal bankruptcy. But the OFT will consider breaches of it relevant to the fitness of those providing such services.

This publication also sets out views on some fitness issues that have arisen in relation to the conduct of lenders, creditors and credit brokers in their dealings with DMCs.

Purpose of the guidance

All who provide debt management services, whether they charge a fee or not, are required to be licensed under the Consumer Credit Act 1974 ('the Act'). Free provision of some debt management services is made by a number of organisations, some of whom operate under individual licences and some of whom operate under the group consumer credit licence provisions of the Act. This Guidance is relevant to the

activities of all such providers but for the reason given above is aimed primarily at DMCs.

The OFT has a duty under the Act to ensure that applicants for licences are fit to engage in the activities for which they wish to be licensed, and to monitor the continuing fitness of those to whom licences have been granted. In considering fitness the OFT is able to take account of any circumstances which appear to be relevant, and in particular, any evidence that an applicant or licensee, or any of its employees, agents or associates, has engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not).

Where the OFT has evidence of such practices action can be taken to refuse or revoke the consumer credit licence of those concerned. The Office also has powers to take action, where appropriate, under other legislation such as Control of Misleading Advertisements Regulations, Unfair Terms in Consumer Contracts Regulations, the Consumer Protection (Distance Selling) Regulations and the Stop Now Orders (EC Directive) Regulations.

9 The OFT has no objection to DMCs charging for, or consumers choosing to pay for, debt management services. The consumers using these services will, however, often be vulnerable because of the nature of their financial problems and, almost by definition, have the least available financial resources.

It is, therefore, particularly important that the services provided by DMCs are carried out with due care and attention.

Skill and fairness.

10) The purpose of this guidance is to set out minimum standards to be met by DMCs if they are to be judged fit to hold a consumer credit licence. The guidance does not, however, set out a comprehensive checklist. Not all of its elements will apply to every DMC, it is not exhaustive and conduct or omissions not included in the guidance

may be taken into account by the OFT in determining fitness. DMCs are expected to abide by the spirit as well as the letter of the Guidance.

11) Some of the practices highlighted here are clearly unfair or improper and in those cases DMCs should have been aware even before the issue of this Guidance of the risk of licensing action if they engaged in such practices or allowed their employees, agents or associates to do so. In other cases the position might have been less clear, and this Guidance is intended to be helpful in outlining the kinds of business practice to which the OFT is likely to object.

DMC acting as an agent for a consumer debtor

12) During the consultation on this guidance the OFT has been told that some creditors have a blanket policy of refusing to enter into negotiations with some DMCs or even refusing to accept payments sent by DMCs on behalf of consumers. The OFT is concerned at these reports, especially those suggesting payments are refused.

13) Where a consumer appoints a representative to negotiate on their behalf, it is an unfair and improper business practice on the part of the creditor to operate a policy, without reason, of refusing to consider such requests.

14) Where a creditor wishes to refuse to negotiate with a particular representative, it must make its position known to the representative and also immediately inform any consumer on whose behalf the creditor is approached by that representative.

15) Where payments are tendered not by the debtor personally but by someone acting on his/her behalf, it is a principle of law that creditors cannot refuse to accept those payments. The practice of creditors returning payments, or not crediting payments to consumers' accounts, purely because they are received through a DMC, therefore, is not acceptable and is a matter which the Office regards as seriously detrimental to the fitness of the creditor. This is so even in circumstances where a creditor has indicated that it will not

negotiate with a DMC acting as a representative of a debtor.

16) It has also emerged in the consultation that some lenders and credit brokers refer consumers to DMCs as potential clients. There is no objection to this provided it is done with the informed, prior consent of the consumer. Referrals made without this consent will affect the fitness of the lender or credit broker.

PART II

The Guidance

17) The following guidance sets out minimum standards for debt management companies in the **marketing** of their services, **pre-contract contact**, the provision of **pre-contract information**, **contract terms**, **advice** and the **nature of the debt management service** provided.

18) Marketing, promotion and advertisements

a) Advertisements and other promotional material, whether written or on television or radio, must be accurate and clear and must not mislead, either expressly or by implication or omission.

b) Where printed advertisements are used, they must be easily legible and, where this Guidance requires warnings and caveats, these must be accorded similar prominence to the material in the advertisement which they are intended to qualify.

c) Advertising of debt management services should not:

I state or imply that the service will free the consumer of the need to meet their debts;

I emphasize the 'savings' to be made by rescheduling debts (for example, by means of a reduction in monthly payments) without making it equally clear that this will usually lead to an increase in the size of the sum to be repaid and that rescheduling the debt may impair the consumers' credit record. Where specific 'savings' (e.g. the amount by which outgoings per month can be reduced) are quoted there must be a similar indication of the likely increase in the total amount of sum to be repaid and/or the period of repayment, and the fee that will be charged; an I

claim or imply that the DMC can guarantee an outcome favorable to the consumer in negotiations with creditors.

d) Where the arrangements with the DMC will lead to a period in which contractual payments are not made by the consumer (e.g. because the first payment is a deposit or up front fee or because of a delay in distributing payments to creditors), the consumer must be warned of this in the marketing literature.

19) Contact with consumers

a) There must be no cold calling of debt management services by personal visit.

The Consumer Credit Act makes it an offence to canvass 'debt adjusting' and 'debt counseling' services during visits to consumers' homes, unless the visit is requested by the consumer (section 154).

'Debt adjusting' and 'debt counseling' are defined in the Act and cover most if not all of the services described as 'debt management services' in this Guidance.

b) Visits not covered by section 154 may be subject to the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987, commonly called the Doorstep Selling Regulations. Where the Doorstep Selling Regulations apply, they must be strictly adhered to.

c) DMCs must not accept referrals from credit brokers or lenders unless the consumer has given informed prior consent to the credit broker or lender for such a referral.

20) Information to be provided before the contract is signed

Consumers must be provided with adequate information about the service to be provided, and the consequences and costs of it **prior** to entering into an agreement. All documentation must be clear and in plain language and must state clearly the implications of entering a debt management programme. In particular:

a) Where the DMC contacts a potential client after a referral from a credit broker or lender, the DMC

must disclose at the outset of the conversation how they have obtained the consumer's details, what service they offer and that they cannot themselves provide a loan.

b) Where a DMC operates by means of any distance communication it must comply with the requirements in the Consumer Protection (Distance Selling) Regulations 2000 to provide (among other things) certain information to the consumer **before** the contract is concluded. In particular the consumer must be told that it has a cooling off period of seven days during which the contract may be cancelled.

The DMC cannot contract out of this cooling off period unless (i) it has given a clear warning in writing (or other durable form) which is delivered before the contract is entered into and (ii) it has with the clients' agreement begun to perform the contract in that period.

c) The nature of the service that is being offered; the total cost to the consumer of the service including any initial or fixed charge fee or deposit, the periodic management fee to be paid to the DMC multiplied by the estimated length of the contract; the amount to be repaid; and the likely duration of the contract must be clearly explained at the outset.

d) Where it is not possible to establish at the pre-contract stage the cost or duration of the contract, the consumer must be given a realistic estimate of cost and the duration of the contract. This should be accompanied in close proximity by a clear warning that it is an estimate.

The assumptions on which the estimate is based should be set out. If during the pre-contractual stage it becomes clear that the estimate does not adequately reflect the consumer's circumstances a revised estimate must be given.

e) If an initial up front fee or deposit is payable the consumer must be given clear explanation of:
I what aspect of the service is covered by the fee or (as the case may be) what the deposit is held for;
I the manner in which it is to be calculated; and

whether it is refundable, with due regard to the principles of contract law in relation to deposits and part payments.

f) The consumer must also be advised that he will be given the opportunity to withdraw from the contract if, when he is informed of the total cost of the service, he decides that the service is unsuitable (see paragraph 21g) below).

g) Consumers must be clearly warned in writing:
I where the first payment goes to the DMC and not to the creditors (whether as an initial up front fee, as a deposit or for some other reason) that they will miss a payment to their creditors and will therefore go into arrears or further into arrears;
I that creditors are not obliged to accept reduced repayments or to freeze interest and that, unless they do, repaying the same debt over a longer period of time will lead to an increase in the total amount to be paid;
I that collection actions, including default notices and litigation, can ensue and that there is no guarantee that any existing or threatened proceedings will be suspended or withdrawn. The possibility of default notices – including that they may incur costs that are added to the debt – must be made clear;
I 9 I of the likely impact of the debt management programme on the consumer's credit rating. In particular it should be stated that they might not be able to obtain credit in the short term and that there is some likelihood that they will not be able to do so in the medium to long term either.
Consumers must not be misled into thinking that their credit rating will improve earlier than when the payment of their debts is completed, or even immediately thereafter:
records are retained by credit reference agencies for a further six years;
I of the importance of meeting debts such as mortgage, rent and utility payments; and
I not to ignore correspondence or other contact from creditors or those acting on behalf of creditors.

h) The nature of those commitments that will and – especially importantly – those that as a matter of

the DMCs own decision, will not be included within the repayment plan must be made clear to potential clients. The DMC must exercise all due care to ensure that debts that it says it cannot deal with are not included in programmes by mistake.

i) Where a DMC is aware that a particular creditor refuses to deal with it, (for whatever reason and whether or not the DMC regards this refusal as justified), the consumer must be told of this as soon as the DMC is aware that the consumer has an account with that creditor.

21) Contract terms

a) Contract terms and conditions should be fair, written in plain, intelligible language and easily legible;

COST AND DURATION OF CONTRACT

b) The contract should set out the: I nature of the services that are being supplied (including the kinds of debt that will and will not be covered); I total cost to the consumer of the service including any initial or fixed charge fee or deposit and the periodic management fee to be paid to the DMC multiplied by the estimated length of the contract; I the amount to be repaid; and I the duration of the contract.

c) Where it is not possible to state firmly the cost or duration of the contract, the contract must include realistic estimates of cost and the duration of the contract. This should be accompanied in close proximity by a clear warning that it is an estimate. The assumptions on which the estimate is based should be set out.

d) The contract should set out the circumstances in which the consumer may withdraw and receive refund of any monies paid to the DMC.

e) Under the Distance Selling Regulations (referred to above) where a consumer enters into a contract before he has received any written information, he has both (i) a cooling-off period of at least seven working days during which he can withdraw from the contract with a full refund and (ii) a right to be informed that he has that cooling

off period (see Regulations 8(2) and (3) and 12(3)).

f) The contract must not include any term which says or implies that there are no circumstances in which a client is entitled to refund. For example a refund (and in some cases a full refund) may be due to a dissatisfied client if:

I the DMC has promised more than it can deliver. This may be the case even where the DMCs contract is appropriately worded, if (for example) its written or oral marketing is over-optimistic; or
I the DMC has failed to conduct negotiations with the reasonable care and skill required by section 13 of the Supply of Goods and Services Act; or
I there has been a total failure of consideration.

g) The contract should allow the client to withdraw from the contract where, following signing of the contract the total fee differs significantly from the estimate given prior to the contract (for example, because a full investigation of the client's circumstances reveals that the monthly payment must be larger than first thought).

HANDLING MONEY

h) Any monies held on behalf of consumers must be kept in a client account not usable by the DMC for the purposes of its own business. This includes, in particular, any deposit which under the contract may be returned to the client at any date in the future and any monies received by the company for payment to creditors.

Any interest earned on this account should accrue to the benefit of the client, not the company.

i) The contract must specify a period within which payments received from the client will normally be passed on. Delay that adversely affects the individual consumer's financial position and which exceeds 5 working days from receipt of cleared funds is unacceptable. If the DMC fails to disburse payments to creditors in accordance with the contract, it should accept responsibility and inform the client of the delay, together with the reason for it. The law does not impose liability where the reason for delay is beyond the control of the

supplier.

But where the delay is not beyond its control the DMC should take appropriate action to put the consumer in the position they would have been had the contract been fulfilled.

This includes, for example making good any additional interest which has accrued and any default charges that have been applied to the account as a result of the delay. In this respect, the DMC must have appropriate systems in place to deal with foreseeable problems and to minimize delays, even when the initial cause is not its fault. As the consumer relies on the DMC to be made aware of any delay, DMCs should take reasonable steps to anticipate delays and make good losses.

OTHER TERMS

j) Contracts must not prohibit clients from corresponding with, or responding to written or oral communications from, creditors or others acting on behalf of creditors. However, in order to avoid duplicate or contradictory action, contracts may reasonably require the client to send to the DMC a copy of any communication from a creditor. Where the contract requires or suggests that the client should send such correspondence to the DMC, it must deal with it appropriately and promptly. The DMC must send to the client a copy of any written communication it sends to or receives from the creditor, and (unless the creditor itself sends a copy to the client) must keep the client informed of other communications.

k) Contracts must not include declarations such as 'I fully understand the requirements of the contract' or confirmation that certain provisions have been explained.

22) ADVICE

a) All advice given should be in the best interests of the client. Debt management programmes are not suitable for all debtors, and DMCs must exercise all due discretion, in the best interests of the debtor, in deciding whether or not take a debtor as a client.

FINANCIAL POSITION

b) A realistic assessment of the financial circumstances of the consumer – including both income and outgoings – must be made before advice is given.

I Consumer income must be verified by appropriate means, such as pay slips.

I Reasonable steps must also be taken to verify regular outgoings. Estimates of expenditure on certain items are permitted, but only if precise figures are not available. Standard expenditure guidelines may be used where there is no better indication of the client's outgoings provided that there is nothing to suggest that they are inappropriate. A copy of any financial statement sent to creditors must also be sent to the client.

PAYMENTS

c) Any advice given to the client to cancel direct debits or standing orders prior to the repayment plan being agreed with creditors must be demonstrably in the best interests of the client. It is not a step which should be undertaken lightly. DMCs must clearly warn clients of the risks and consequences of this course of action if they advise it. Where this course is taken, the OFT would normally expect that regular payments to creditors (even if lower than the contractual ones) should continue to be made wherever possible.

d) The difficulties associated with stopping contractual payments are especially acute when they are accompanied by a period in which no payments at all are made (e.g. because the DMC takes the first payment under the plan as a deposit or up front fee (see also paragraphs 18d), 20g), or because there is a delay in distributing payments to creditors).

If this will, or is likely to, happen under the plan the consumer must be clearly informed and warned of the consequences. It is not sufficient for this purpose that there be a statement to this effect in the small print of the terms and conditions.

e) Clients should not be advised to make payments to accounts at a rate lower than the rate at which any interest and other charges are accruing or may accrue, unless this is demonstrably in their best interests. In such a case, a clear explanation must be given to the client as to why this course is necessary and its implications.

f) If, following advice to cancel direct debits or reduce the level of contractual payments, it becomes clear that the course of action is not producing results in the client's interest, (e.g. because creditors are not agreeing to freeze interest), then the client must be informed immediately so that he may be advised appropriately and take whatever action is in his best interests (including the possibility of withdrawing from the plan).

Office of Fair Trading

13g) Clients must be advised of the importance of meeting debts such as mortgages, rent and utility payments. More generally it should not be assumed that it is always in the client's best interests simply to divide available income between debts in proportion to their size. For example advice should take into account the fact that some loans may lose the benefit of a reduced rate of interest if payments are missed, or that there may be a benefit in settling a loan with a higher rate of interest sooner than one with a lower rate of interest.

OTHER POINTS

h) Clients must be advised not to ignore correspondence or other contact from creditors or those acting on behalf of creditors.

i) DMCs must take special care where they are dealing with clients in a different jurisdiction (e.g., a company based in England dealing with a Scottish client) because there may be differences in contract law or court procedure that may have significant impact on what is the best course of action for the client. It is not acceptable to ignore this point until legal proceedings are issued, and

then to inform the client that no further help can be given because the DMC has no expertise in the law of the other jurisdiction

23) Debt management services

a) DMCs must inform the client of the outcome of negotiations with creditors. This is not limited to the situation when creditors have refused to deal with the DMC, or have returned payments to the DMC, or refused to freeze interest. But it is especially important in those cases.

b) Clients must be kept informed of any developments in the relationship with creditors, in particular the issue of default notices or the threat of issue of legal proceedings.

c) Where the service provided by the DMC includes debt repayment, the DMC must:
I take full account of debts such as mortgage payments, rent, utility payments etc including any arrears already incurred on those debts, in setting monthly repayments; and
I reassess the payment plan and consider any necessary changes (including bringing the plan to an end) to ensure it remains in the client's best interests, as soon as it becomes aware of material change in the client's financial position. The client should be advised of any recommended changes without delay.

Repayment plans should in any event be reassessed on at least an annual basis and the client informed of the outcome of the reassessment.

d) Clients should at the outset be given a statement of how their money is being disbursed. In addition, where a plan has been agreed, the balance owed (or if an accurate figure is not known the best estimate), the period of payment needed to clear the debts and the fee charged by the DMC must be included in the statement. Clients must be kept informed of any material changes to these arrangements at the time they occur. DMCs should meet any reasonable request by a client for a statement of his or her position.

e) DMCs should respond to complaints promptly and fairly.

f) All correspondence, statements and other paperwork sent to or received from the client or the client's creditors and which has not already been copied to or returned to the client, should be retained by the DMC until such time as the contract is completed or terminated.

On termination or completion of the contract, all retained paperwork should be returned to the client unless, at that time, the client says that they do not want the paperwork.