

The Customer, The Collector And The Debt

Management Company

Purely coincidentally, I set about writing this article during the recent local elections campaign. Having decided upon the title of the article, an image started to build in my mind of a TV debate where a member of the public was in discussion with a politician from each of the two main parties. Within the debate, the same scenarios were being discussed but there was an amalgam of powerful rhetoric, antagonistic exchanges and significantly differing ideals.

In many ways, I believe the relationship which originally existed between the customer, the collector and the fee-charging debt management company (DMC) bears some similarity to this political analogy.

Thankfully, however, and in no small way due to the excellent work of the Office of Fair Trading (OFT), this sad reflection of hostile and ineffective communication has given way to a much healthier relationship between 'the two main parties', based on the setting out of clear rights and responsibilities.

Key obligations

The relevant rules for the DMCs and debt collectors respectively are contained in the OFT's guidance notes, which can be found in full at <http://www.oft.gov.uk>. Each note sets out minimum standards which must be met if the company or individual is to be judged fit to hold a consumer credit licence.

- Debt Management Guidance (December 2001). This is relevant to the activities of all who provide debt management services, whether they charge a fee or not, but it is aimed primarily at DMCs.

- Debt Collection Guidance (July 2003). Particularly the section regarding 'deceptive and/or unfair methods'.

Perhaps understandably, many debt collectors have a better understanding and awareness of the July 2003 guidance than they do of the 2001 version.

The obvious impact of such ignorance is that the risk of misinformation is significantly increased and unambiguous communication between debtor, creditor and DMC becomes almost impossible to achieve.

2003 Debt Collection Guidance

Before quoting from the guidance note, it is worth stressing that where payments are tendered by someone acting on the customer's behalf, it is a principle of law that creditors cannot refuse to accept those payments.

Therefore, the practice of creditors returning payments, or not crediting payments to consumers' accounts, purely because they are received through a DMC, is totally unacceptable.

The note specifically cites the following as examples of unfair practice:

- 2.8.d Contacting debtors directly and bypassing their appointed representatives.

- 2.8.e Operating a policy, without reason, of refusing to negotiate with DMCs.

The definition of 'appointed' in this context is key, and I believe it is reasonable for the collector to expect written confirmation from the DMC that they are dealing with a case, together with signed authority from the debtor or debtors, before considering them to have been appointed. It is, of course, important that debt collectors are aware of any backlog in correspondence before informing the debtor that no such confirmation has been received.

In terms of 'operating a policy, without reason'; I believe it would be reasonable to refuse to negotiate with any DMC which consistently failed to comply with the behaviour detailed in the 2001 note.

2001 Debt Management Guidance

In its entirety this is wide ranging and sets out minimum standards for DMCs 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.

By way of brief example, consumers must be clearly warned in writing that creditors are not obliged to accept reduced payments or to freeze interest, and that any existing or threatened proceedings will not necessarily be suspended or withdrawn.

For the purposes of this article, however, I have chosen to focus on the areas which are relevant to arguably the three most common scenarios which debt collectors continue to encounter in 2007, namely:

- The customer saying they have been told not to speak to the creditor because the DMC is now dealing.

- The customer saying they have entered into a contract with a DMC and are under the impression they are unable to break that contract.
- The customer failing to understand why the creditor has not received payment as they have already made their first payment to the DMC.

This article in no way seeks to apportion blame for the customer's sometimes inaccurate understanding of their position, but simply endeavours to provide clarification of the relevant facts.

Contact with the creditor

With regard to the first point, it is important to remember the following key obligation given under 'Information to be provided before the contract is signed', which states that consumers must be clearly warned in writing not to ignore correspondence or other contact from creditors or those acting on behalf of creditors.

Similarly, the contract itself must not prohibit clients from corresponding with, or responding to written or oral communications from creditors or others acting on behalf of creditors.

In my opinion, the requirement that the debt collector does not bypass the customer's appointed representative does not preclude them from contacting the debtor direct where, for example, the DMC has failed to provide income and expenditure details within a reasonable period of time.

Right to break the DMC contract

The second point refers to whether or not a client is allowed to break a contract once it has been signed.

The guidance is clear on this point, stipulating, for example, that the contract:

- Should set out the circumstances in which the consumer may withdraw and receive a refund of any monies paid to the DMC.
- Must not include any term which says or implies that there are no circumstances in which a client is entitled to a refund.
- 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.

At least two well-known DMCs mention on their website that a customer can cancel their plan at any

time provided they give two weeks written notice of cancellation.

Retention of a customer's first payment

Turning finally to the third point, there are several references in the guidance to the DMC's obligations in respect of retaining the first payment as, for example, a deposit. Specifically:

- If an initial up-front fee or deposit is payable, the consumer must be given a clear explanation of what aspect of the service is covered by the fee or (as the case may be) what the deposit is held for, together with the manner in which it is calculated.

- Consumers must be clearly warned in writing where the first payment goes to the DMC and not to the creditors that they will miss a payment to their creditors and will therefore go into arrears or further into arrears.

DMCs are also obliged to respond to all complaints promptly and fairly.

Compliance reviews

In November 2003, the OFT published the results of its compliance review which was conducted, in part, to check how effective the guidance had been in removing problems from the DMC market.

The main finding of the review was that the guidance had led to a 70% reduction in complaints received by the OFT, and that was undoubtedly an outstanding result. A similarly positive conclusion was reached in the Debt Collection Guidance compliance review published in December 2006.

The goal now must be for both parties to maintain their commitment to conducting their business in a manner which adheres to both the letter and the spirit of the guidance notes and maximises the chance of 100% compliance each and every time a DMC is appointed.

About the author

Chris Firat is Director of Chris Firat Training, and has 24 years experience in the consumer finance industry. Chris Firat Training provides tailored collection courses to a variety of lenders, third party processors, solicitors and debt collection agencies.

Read about our debt collection training courses or get in touch to request a call or brochure at www.chrisfirat.com.