Use, format and content of standard debt collection communication

Guidance document

Produced in association with the Office of Fair Trading (OFT)

csa
voice of the collections industry

Contents

Guidance topic

A. Executive summary

1. Introduction

1.1. This guidance has been produced by the Credit Services Association ("the Association") in association with the Office of Fair Trading ("OFT"). It is expected that Consumer Credit Licence holders will abide by the spirit as well as the letter of the OFT Debt Collection Guidance ("the DCG").

1.2. This guidance was initially produced following concerns from the OFT that it had seen letters which, in its opinion, did not fully comply with the DCG. Following on-going liaison with the OFT subsequent to the 2011 update to the DCG, this guidance has now been revised to incorporate the changes and to provide additional clarification on communication within the industry. It does not set out standard text or templates and is not intended to prevent Members from designing letters in their own company style providing they remain compliant with the DCG and other relevant regulatory guidance, legislation and the CSA Code of Practice. It provides guidance by highlighting a number of areas which Members need to consider when drafting and reviewing their collection letters.

1.3. The OFT has advised that its consideration of standard letters is always on a case by case basis, taking into account a number of factors including: the stage at which the letter is sent out; consumer complaints received about the letter, and; any previous enforcement action taken by the OFT on similar issues.

2. Service Provider or purchaser?

2.1. Although the debt collection and purchase industry understands the difference between acting on a contingent basis for clients and purchasing debt, it is apparent that outside the industry this distinction is far from clear. It is therefore important that collection letters identify the creditor and the capacity in which the Member is acting, ie either on behalf of the creditor or as purchaser and assignee of the debt.

3. Consumer v commercial debt

3.1. The OFT's role under the Consumer Credit Act 1974 is primarily concerned with consumer protection and therefore the collection of commercial or non-regulated debt will largely fall outside of the DCG and other consumer regulation. However, non-regulated debt will often still involve contacting a customer, whilst commercial debt can often include small traders, partnerships and directors who may have given personal guarantees, the majority of whom need to be treated in the same way as "regular" customer. Therefore, this guidance also applies in these cases.

B. Tracing

1. Soft letters and postcards

1.1. The OFT's concerns regarding data and data accuracy across the credit industry led to the introduction of a section in the DCG focusing entirely on this subject.

1.2. If poor data is used during the trace and collect process and/or poor quality data is provided by some creditors this can lead to the wrong individuals being contacted for payment of a debt. This acts as a catalyst for a number of complaints.

1.3. A debt collection agency (DCA) should not send communication referring to "debt" or disclosing debt or financial details to an individual unless it is reasonably certain that they are the customer in question. Therefore, unless a DCA is reasonably certain it is sending the letter to the actual customer, it should use correspondence that does not refer to the debt. This standard of "reasonableness" is measured on what other Members and regulators would objectively consider to be certain on the balance of probabilities in the circumstances.

1.4. The Association and the OFT agree that a distinction can be made between debts referred to a DCA for trace and collect activity and those referred purely for collection activity. With the latter, the Association would regard it as unreasonable to carry out trace activity and verification on all standard collection instructions received from clients on the basis that the information may be inaccurate. The Association therefore regards it as reasonable for a DCA to rely on the information provided by clients in these circumstances as being the correct details for the customer. The OFT has told the Association that it would expect further checks to be carried out in circumstances where there have been problems with data from a specific client in the past or where complaints have highlighted possible data quality issues, particularly if the collection letters mention legal action.

1.5. With regard to trace and collect instructions, it is essential that the DCA carries out reasonable tracing and verification checks prior to any collection letters being issued. Members should refer to the Trace section of the Code of Practice for further information on verification tools.

1.6. The OFT has confirmed it is happy with the format and content of the Soft Letter Template produced by the Association, and it is suggested this or similar wording is used in circumstances where a soft letter is required to verify the address of the customer. A copy of this template letter can be found on the Association's website, within the Tracing Factsheet (which was produced in association with the Information Commissioner's Office (ICO)).

1.7. The Association has provided guidance previously on the use of postcards being sent to named trace subjects to seek a response from them to verify their identity. Because the Companies Act 2006 requires a business to state its registered name, address and number on all correspondence, its identity is therefore available for anyone who reads the postcard to see. Consequently, third parties would be able to identify the postcard as having been sent by a consumer credit business to the individual. This would likely be a breach of the Data Protection Act 1998 and the OFT have expressed that they would consider it an unfair practice.

References

OFT Debt Collection Guidance – 3.7 e, p, q; 3.9 a, b, j; 3.16 – 3.23
CSA Code of Practice – 1 u, x; section 6
CSA Soft Letter Template
CSA Tracing Factsheet

2. Soft trace letters addressed to 'The Occupier'

3. The OFT was made aware of cases in which soft trace letters were being sent addressed to "The Occupier" even though the name of the customer was known. The reason behind this was the belief that it would encourage the person living at the address to open the letter, which they may have been less likely to do if they received a letter addressed to them.

4. This was given some consideration by the Association and by the OFT, and the following conclusions were reached: If the address is correct and the letter is addressed to "The Occupier", then there would be the risk that another occupant would open the letter and become aware of the customer's circumstances. This could potentially find the company in breach of the OFT DCG in respect of publicly embarrassing a customer. If the address is incorrect and the resident of that address opens the letter, it is unlikely to affect how they choose to deal with the matter – they may still proceed to ignore or throw away the letter.

5. In light of the above, it is the view of the Association and the OFT that where the name of the customer is known, best practice would be to send all correspondence addressed to that named individual (unless a third party representative has been authorised to deal with the matter).

6. Sending letters addressed to 'The Occupier' is unlikely to result in a positive impact that would justify the potential breach of regulations and the risk of complaints.

7. If the name of the customer is not known, such as may be the case with utility debt, then the use of soft trace letters addressed to "The Occupier" would be acceptable. The likelihood of any other type of account (regulated and non-regulated) not having the customer name is very low.

See also "Sending Debt Collection Letters addressed to The Occupier" on page 8.

References

OFT Debt Collection Guidance – 3.7 p, q; 3.9 a, b, j; 3.23 a
CSA Code of Practice – 1 u, x; Section 6

C. Content – general

1. Settlement offers

1.1. The OFT regards it as a potentially oppressive business practice if letters making settlement offers are issued to individuals when it is not reasonably certain that they are the customer in question or have previously notified the DCA that they are not the customer in question, as this could be construed as pressurising the individual to pay.

1.2. Similarly, if letters making reduced settlement offers are used when an account is in dispute, the OFT views this as a failure to suspend collections activity and therefore a potential breach of the DCG.

1.3. However, the OFT does not object to the use of settlement offers where it is reasonably certain that the person contacted is in fact the customer and the debt is either not in dispute or the settlement offer refers only to that part of the debt that is not in dispute. For example, if a complaint concerns an issue relating to collection activity (ie collector error or attitude) rather than an obligation to pay the debt, or if the actual debt is not in dispute but bank charges are associated with the debt are disputed, then Members are not prevented from sending settlement letters provided the settlement offer amount is lower than the total balance less the disputed bank charges.

1.4. Where a settlement offer is made and accepted as full and final settlement of the debt, clear and formal confirmation must be provided to the customer that this is the case.

References

OFT Debt Collection Guidance – 3.3 h; 3.5 o; 3.9 a, k
CSA Code of Practice – 1 v, x; 3 b (disputes)

2. Statements and phrases

2.1. The use of certain statements in standard letters gives the OFT cause for concern. They gave the following as an example:

"This problem will not go away and we intend to recover the full amount you owe without further delay."

In the OFT's view, such statements could in some circumstances breach paragraphs 3.3 and 3.7l of the DCG.

2.2. The Association has explained to the OFT that the use of such statements can in other circumstances give a clear message to the customer and highlights the importance of making contact in order to avoid potential legal action.

2.3. Nonetheless, Members are reminded that the wording of letters must not be aggressive or misleading and should be appropriate to the customer. In the above example, if the Member has the option to discuss a repayment arrangement with the customer, this should be made clear in the body of the letter so the customer is fully aware that they can pay over time.

References

OFT Debt Collection Guidance – 3.2; 3.3; 3.6; 3.7 I, l
CSA Code of Practice – 1 b, w, y, aa

3. Vulnerable customers

3.1. The issues highlighted throughout this guidance document are of particular relevance where it transpires that the case is sensitive and/or involves communicating with a person that may be categorised as "particularly vulnerable" under the DCG (eg the individual has mental health problems, long term or terminal illness or other disabilities which impact on their ability to pay). Where a DCA becomes aware of such cases, the OFT and the Association would expect measures to be in place to ensure that such cases receive appropriate handling, in line with all applicable published Guidance.

3.2. Section 2.2 of the DCG offers the following information regarding "vulnerable" and "particularly vulnerable" customers:

"Most customers may be regarded as 'vulnerable', to some degree, by virtue of their financial circumstances. Of these, some may be, permanently or temporarily, rendered particularly vulnerable by virtue of the fact that they are significantly constrained in terms of their ability to engage appropriately with those pursuing them for the repayment of debts owed.

"Customers with mental health issues and/or with mental capacity limitations (amongst other types of actually or potentially particularly vulnerable individuals) may fall into this category."

3.3. Both the DCG and the CSA DBSG Code of Practice provide details on how Members should deal with sensitive cases. Further information can be found in the Association's Guidance on Mental Health. In addition to this, Members may also find the Money Advice Liaison Group's (MALG) Guidance on the Debt and Mental Health Evidence Form useful.

References

OFT Debt Collection Guidance – 2.2; 3.7 r; 3.9 c, d; 3.23 b, e
OFT Irresponsible Lending Guidance – 7.13
CSA Code of Practice – 1 aa, bb; Section 2
MALG Mental Health Guidance

4. Sending debt collection letters addressed to "The Occupier"

4.1. A number of Members work with utility clients and expressed concern that sending debt collection letters addressed to "The Occupier" (a common practice within the utility recoveries sector because of a frequent absence of customer names) may find them in breach of the OFT DCG, specifically section 3.9a (see below). Whilst utility debt is not regulated by the OFT, they will consider all debt collection activity of a licensee when determining their fitness to hold a licence, regardless of the type of debt being collected.

"3.9 Examples of unfair or improper practices are as follows:

a. Sending demands for payment, by any means, to an individual when it is uncertain whether he is the actual customer.

For example: threatening debt recovery action against "the occupier" of particular premises."

4.2. The OFT did clarify that the specific unfair/improper practices cited in the DCG were primarily developed in the context of recovery of consumer credit debt only and are just examples to provide some clarity to licensees. They confirmed that in considering fitness to hold a licence, although they will consider the licensee's debt collection activity on non-regulated debts, they acknowledge that different sectors will operate within different frameworks.

4.3. When seeking to recover consumer credit debt, the creditor is almost always going to have information relating to the identity of the customer from the original credit agreement. Whereas, with a utility debt, the identity of the customer may not always be clear. The new occupier of an address has no obligation in law to tell the utility supplier who they are, but the supplier is obliged under law to supply them with those services under a deemed contract. Therefore, in such circumstances, the utility provider will send the bill, reminder or demand for payment to "The Occupier". If they instruct a DCA in the recovery, they may instruct the DCA to write to "The Occupier" if the identity of the customer is not known.

4.4. As the context is completely different from the normal consumer credit scenario, the OFT has confirmed that it would have no particular concerns about the use of such communications by licensed businesses in that context, provided reasonable steps are taken to identify the customer, where possible, and that they are written to by name when their name is known.

References

OFT Debt Collection Guidance – 3.7 p, q; 3.9 a, b, j; 3.23 a
CSA Code of Practice – 1 u, x; Section 6

D. Content – legal

1. Describing the legal process

1.1. The OFT has seen a number of standard letters issued by DCAs which contain inaccuracies and omissions in their description of the debt recovery procedure and the legal process, and which fail to mention that steps are required before enforcement action can be taken. For example:

- Letters which set out the potential enforcement actions following non-payment of a County Court Judgment (eg bailiffs seizing goods, employers deducting money from wages) without indicating that a further application to the court is required before enforcement action can be taken (ie to obtain a Warrant of Execution, Attachment of Earnings, Charging Order, etc); or

- Letters presuming the awarding of a Judgment (eg stating "when Judgment is granted…" as opposed to "if Judgment is granted…")

- Letters referring to Bankruptcy and Charging Orders where it is not clear that a staged process is involved.

1.2. Sending such letters would, in the OFT's view, potentially be an unfair or oppressive business practice in breach of several sections of the DCG.

1.3. Although the OFT does not expect to see every stage of the process set out in letters of this type, a correct indication of the steps required before enforcement action can be taken should be provided to prevent letters from being misleading, potentially exploiting customers' lack of knowledge and being perceived by recipients as threatening.

1.4. Members are reminded that the granting of Judgments and other orders are court decisions and letters should not pre-empt a particular outcome eg that a Judgment will be granted. Communications should not mislead customers to believe that the outcome of legal proceedings will be determined other than at the discretion of the court.

1.5. If a DCA wants to refer to the process that may be followed after a debt is unpaid, it is the responsibility of the DCA to understand and correctly state the process.

References

OFT Debt Collection Guidance – 3.2; 3.3 a, b, e; 3.4; 3.5; 3.7 l, n, s; 3.9 h
CSA Code of Practice – 1 g, y; Section 10

2. Appropriate and viable legal action

2.1. Standard letters should not threaten legal action which cannot be taken or which refers to the wrong jurisdiction. For example:

- The threat of Charging Orders where there is no property;

- Threatening to sue in a County Court where the customer is resident in Scotland;
- Threatening Bankruptcy or Sequestration proceedings below the statutory threshold

2.2. Members stating that they may take legal action as a potential consequence of non-payment must be able to support their claims that this is a viable and legitimate option available to them that, on the basis of current information, they would take if the customer does not engage. If the company cannot support such claims, then they should not threaten this course of action.

2.3. In addition, before proceedings are commenced, Members must ensure that the pre-action protocol under the Civil Procedure Rules 1998, as amended, are followed. This includes providing in the letter before action information about where the customer can seek free debt advice.

2.4. With specific reference to Bankruptcy or Sequestration proceedings, Members are reminded that these can only be initiated against debts over the statutory threshold. Therefore, any threat of such action (including Statutory Demands) in letters where the debt amount is less than the statutory threshold would be in breach of the CSA Code of Practice and potentially considered an unfair and oppressive business practice under the DCG. We therefore suggest that any debt collection letters sent to customers owing less than the statutory threshold should not include any suggestion of Bankruptcy or Sequestration as a potential course of action.

References

OFT Debt Collection Guidance – 3.2; 3.4; 3.5; 3.7 n, s, t; 3.9 h; 3.11 a, b, 3.14; 3.15
CSA Code of Practice – 1 a, g, y, dd; Section 10

3. Timing of issue of letters referring to legal action

3.1. The OFT regards it as an unfair and oppressive business practice if letters threatening legal action are issued to individuals if the DCA is not reasonably certain that the address they have is the customer's address. Whilst Members may rely on address data given to them by clients, verification steps should be taken if the Member considers that the data may be incorrect (see paragraph 4 of the tracing section of this guidance).

3.2. Letters which refer to legal action would, in the OFT's view, have the potential to be perceived as a threat of legal action and therefore could be an unfair and oppressive business practice:

- against someone who has a legitimate dispute with the original creditor; or
- when information on the account may be incorrect; or
- if the account could not be pursued through the courts, for example if the debt is statute barred.

3.3. Therefore, even on non-trace-and-collect instructions where the DCA is relying on the information provided by the creditor as being accurate, the DCA should consider whether reference to legal proceedings in a first letter is appropriate. Also, the actions of a Member may be considered aggressive if its first contact with a customer threatens legal action if the customer has not been recently requested to make contact to discuss a payment proposal.

3.4. With regard to disputes, the Association has made it clear to the OFT that, at the time of instruction, Members will likely be unaware if the debt is disputed, as they have to rely on clients not referring disputed debts or because the customer may not have raised this with the client prior to the DCA's involvement.

3.5. The Association has also stressed to the OFT that the customer will have received numerous correspondence and attempts at contact from the client (or in the case of a secondary and tertiary debt, a previous agent), prior to a debt being referred to the DCA. These letters would have informed the customer about potential action which could be taken, including referral to a third party DCA or legal action.

References

OFT Debt Collection Guidance – 3.3 g; 3.5 b, c, d, f, g; 3.7 e, f, o; 3.9 a, b, I, k; 3.19 – 3.23
CSA Code of Practice – 1 o, u, v, x, aa; Section 3 (disputes); 6 c, d; Section 10

E. Design

1. 'Look-a-like' letters and use of boxes

1.1. The OFT referred to the use of standard demand letters set out in a boxed format that closely resemble the layout and appearance of such documents as a County Court Judgment. In the OFT's view, and despite the use of disclaimers such as "this is not a court or legal document", the format of such letters has the potential to be misleading and breach paragraph 3.3a of the DCG.

1.2. Agencies sending exact copies of Court documents, under whatever covering documentation, even if marked "draft", "specimen" or otherwise, are likely to be in contravention of the Administration of Justice Act 1970 Section 40 (1d) and the County Courts Act 1984 Section 135. Additionally, any attempt by an agency to utilise a form constructed in such a way that it might lead a customer to believe or assume that it had come from a Court, or had the authority of a Court, or another official body, when it had not, is likely to contravene the Administration of Justice Act 1970 Section 40 (1c or 1d) and the County Courts Act Sections 135 and 136. Such correspondence is also likely to be in breach of the CSA Code of Practice and the OFT's DCG.

1.3. The use of a boxed format in letters will not always be misleading and can assist the customer by highlighting the important areas they should take note of. For example, a box containing the client name, account number and debt amount clearly explains to the customer what the letter is regarding. Boxes containing contact telephone numbers, payment details or reference numbers can also be useful. However, a boxed format should be used with care to ensure the letter does not mislead (eg by resembling a court document). If a disclaimer is required to inform the recipient that this is NOT a particular document, it is likely to be misleading and in breach of the DCG.

References

OFT Debt Collection Guidance – 3.2; 3.3 a, e
CSA Code of Practice – 1 b, y
Administration of Justice Act 1970 – Section 40 (1c and 1d)
County Courts Act 1984 – Sections 135 and 136

2. Logos

2.1. From time to time, the OFT has been aware of standard letters that display logos which it views as misleading. These include "scales of justice" or other similar logos, which imply a connection with a court, when this is not the case. The use of logos that falsely imply a connection with the court, government body or any other false claim will be regarded by the

OFT as a breach of paragraph 3.5d as well as the spirit of the DCG and could breach certain legislation.

References

OFT Debt Collection Guidance – 3.2; 3.3 a; 3.5 d
CSA Code of Practice – 1 b, y

3. Letter font

3.1. In accordance with the spirit of the DCG, Members should take care when choosing font styles and sizes to ensure they are reasonable, as the OFT believes they could lead to transparency issues as certain fonts may appear to come from courts or public offices. For example, gothic text has connotations associated with legal documents and should therefore be avoided. Generally, a font size less than 10 point could be difficult to read and should be regarded as the minimum usual font size.

References

OFT Debt Collection Guidance – 3.2; 3.3 a
CSA Code of Practice – 1 b, y

F. Trading names

The OFT made clear their views on the use of potentially misleading names with the publication in April 2012 of their Misleading or Otherwise Undesirable Names Guidance Document.

1. Misleading use of trading styles

1.1. The use of different trading styles by an organisation could potentially be misleading if the organisation is not clearly identified.

1.2. All business communications must state the registered name and address of the sender in accordance with the Companies Act 2006. When using trading styles, the communication must make clear that it is a trading style (eg "DCC is a trading style of Debt Collection Company Ltd") and confirm the registered details of the company holding the trading style.

1.3. Trading styles must not be in a name, title or style that is likely to mislead or confuse. All trading styles must be listed on the company's consumer credit licence, in accordance with Section 24 of the Consumer Credit Act 1974. To use a trading name not listed on your licence would be an offence under the Act. The OFT's Guidance on Misleading or Otherwise Undesirable Names outlines clearly what they consider constitutes a trading style in section 3.3 (and should therefore be present on the company's DCA's consumer credit licence). It should be noted that trading styles extend to domain names/website addresses.

1.4. Some DCAs use different trading styles to escalate debts through the collection cycle and some also use different trading styles or departments to differentiate between the types of recovery activity which may take place. For example, if a customer has previously informed the DCA of severe financial hardship, the debt may be referred to a specialist financial hardship unit.

1.5. However, when a trading style is used, the OFT has made it clear that they see no legitimate purpose in failing to be transparent and therefore if the debt is being escalated or transferred to a different department within the same company and/or to a different company within the same group of companies (an associated company under s.184 CCA74), the collection letter should make this, and the reason for that escalation or transfer, clear.

References

OFT Debt Collection Guidance – 3.2; 3.3; 3.7 g, h
OFT Misleading or Otherwise Undesirable Names Guidance – Section 3
CSA Code of Practice – 1 b, y, aa
Consumer Credit Act 1974 – section 24 and 184

2. Misleading terms/names

2.1. A lack of transparency can arise if information is presented in a way which could create a false/misleading impression, including using terms which overstate the nature of the business. For example, using terms in trading names such as “enforcement”, “legal”, “solicitors” and so on, when there are no appropriately qualified staff or related activities. Members are reminded that it is a criminal offence for a company to act in a manner that implies it is “qualified or recognised by law to act as a solicitor” when this is not the case.

2.2. Names or terms used by a DCA must ensure that they could not be construed as misleading as to the nature of the service provided. Similarly, it should not mislead as to the scale of their business or the geographical area of operation.

2.3. Although the OFT acknowledges in paragraph 4.11 of its Guidance on Misleading or Otherwise Undesirable Names the argument that in business areas such as debt collection, “the use of names which are less ‘direct’ as to the nature of the business can potentially minimise stress for consumers”, it makes clear that this cannot “justify the true nature of the business being obscured by the use of a trading name that misleadingly implies an activity or the provision of a service different to that on offer or being supplied.”

References

OFT Debt Collection Guidance – 3.4; 3.5 a, d
OFT Misleading or Otherwise Undesirable Names Guidance – Section 4
CSA Code of Practice – 1 b, g, y, aa

3. Inappropriate trading names

3.1. In certain circumstances, a particular trading name may not be appropriate for communication. For example, if a trading name gave a clear indication that the company was involved in debt recovery (eg Debt Collection Company Ltd) and their contact was intercepted or received by a third party (eg a voicemail left on a house phone where people other than the customer live), it could potentially be construed as publicly embarrassing the customer.

3.2. Therefore, it should be considered whether a DCA’s trading name(s) is suitable for such circumstances. If this is not the case, then it may need to look at whether alternate trading styles should be added to its licence. In many cases, an acronym may be more appropriate. So, in the example given, Debt Collection Company Ltd could add ‘DCC Ltd’ as a trading style to their licence and when leaving voicemails, identify themselves as DCC Ltd. This thereby ensures that they do not inadvertently disclose the nature of their business with the customer to a third party, whilst also having a trading name that the customer would be able to identify.

References

OFT Debt Collection Guidance – 3.7 q
OFT Misleading or Otherwise Undesirable Names Guidance – Section 3; Section 4
CSA Code of Practice – 1 b

G. Other methods of contact

1. Email

1.1. This method of communication has the potential to be intercepted and should, in the majority of cases, be treated as an unsecure method of communication. Therefore, when communicating by email, the nature of the business relationship and account-sensitive information should not be included in the email, unless the email address has been verified and authority to use it has been obtained from the customer. Outlined below are different circumstances that should be considered prior to using this method of communication.

1.2. Consent given in credit agreement and established email correspondence

If the customer has signed a credit agreement in which they requested/gave consent for all communications (including debt recovery) to be by email and email contact has been maintained without a gap of longer than one month since the last contact, then the requirement to seek verification and authorisation would be significantly reduced as the customer's intention appears to be to use this method of communication.

1.3. In the interest of best practice, we would suggest that the first collections email include a statement offering to communicate via alternate means or at a different email address.

1.4. Consent given in credit agreement but no established email correspondence

If the customer signed a credit agreement requesting/consenting to all communications to be by email BUT correspondence has actually been by letter, or there has been no communication with the customer at that email address for a substantial period of time, best practice would be to obtain verification of the address and authorisation to communicate by those means.

1.5. Consent declined in credit agreement

If the customer declined to consent to communications by email, this must be honoured. However, in these circumstances, you would still be able to ask the customer if they would prefer communication by this method and, if so, obtain the necessary verification and authorisation.

1.6. No provision (or lack of clarity) in credit agreement for email communication

If the credit agreement did not provide for email communication, or did not make clear (which need not be by express wording, but logical from the provision) that email would be used for arrears or collections communications, then verification and authorisation should be obtained from the customer.

2. Text messages

2.1. Similar to email, this is considered an unsecure method of communication due to the potential for interception and so customers should either be asked for their consent to be contacted by text message or be given a free number to text “stop” to opt out of receiving the text messages. Given that many smart phones display the content of text messages even if the phone is locked, any use of text messages should not contain account-specific information and should not indicate the nature of the business. The primary purpose of this contact method should be to instigate contact with the customer and not to demand payment. Demanding payment or including account information in this type of communication could find you potentially breaching data protection and could also be construed as being publicly embarrassing to the customer.

References

OFT Debt Collection Guidance – 3.3 k; 3.7 p, q; 3.9 a, b
CSA Code of Practice – 1 b, s

H. Debt purchase & new instructions

1. Notice of assignment – purchased debt

1.1. When a debt is purchased, Notice of Assignment must be provided to the customer to inform them of the assignment, in accordance with the Law of Property Act 1925 and s.82A of the Act. In addition, the seller (original creditor) must send a letter to the customer to let them know the account has been sold to the purchaser (the "goodbye letter"). The seller and purchaser can arrange between themselves who will issue the Notice of Assignment and goodbye letter– they may want to issue the letters separately, or the seller may provide the debt buyer with copy letterhead so that they can send the goodbye letter on their behalf.

References

OFT Debt Collection Guidance – 3.7 f, g, h
CSA Code of Practice – 9 t
Law of Property Act 1925

2. Assignment/transfer of debt – acting on instruction

2.1. The OFT expects that a customer is always made aware before debt collection activity starts who is responsible for collection and who owns the debt. Whilst it is the responsibility of the creditor to ensure that this notification has been provided, the OFT has not been prescriptive about how businesses ensure this requirement is met. Therefore some DCAs may come to individual arrangements with their clients regarding who sends the notification. If the debt is a new instruction to the DCA it should ensure that its first letter is introductory in nature and clear about who the creditor is and why the DCA has been instructed.

2.2. For those working with clients that subscribe to the Lending Standards Board ("LSB") – banking clients – consideration should be given to the requirements for Subscribers, which dictate that collection activity must not commence until the customer has been notified in writing of who is dealing with their account. The Subscriber is responsible for this notification, however, they may make individual arrangements with the DCA as to who actually sends the notification.

References

OFT Debt Collection Guidance – 3.7 g, h, f
CSA Code of Practice – 1 r

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