

Debt collection

Myths and facts

The following are statements, comments and opinion expressed as fact on various customer forums, and the extent to which these statements have any basis of truth.

Myth

Selling a debt is unlawful.

Fact

This is probably one of the most alarming statements we have come across. No, it is not unlawful to sell a debt, and in fact, the reason that it is not unlawful is primarily to protect the customer. Within virtually every customer credit agreement there is a provision for the original creditor to be able to sell, assign or otherwise dispose of an account at any given time. If this were not the case, then should a company be acquired or taken over, then a customer's agreement could be cancelled, with all sorts of potential customer detriment. The specific selling on of a debt has been a fact of business life for some 20 years and occurs worldwide. As much as £10bn of debt has been sold in the UK over the last 10 years.

The Association highlights best practice for debt sale and purchase in the [Code of Practice](#), which should give an idea of what can be expected when an account has been sold.

Myth

All consumer debt is regulated by the Financial Conduct Authority (FCA).

Fact

This is one of the most alarming myths, and one that not only confuses consumers but also other industry regulators, politicians and the media. Only financial services debt (debt relating to accounts formed under the Consumer Credit Act 1974 (amended 2006)) and typically generated by banks, building societies, credit card companies etc is regulated by the FCA. This gives agencies a clear set of rules and guidance to follow, and provides consumers with a clear process of redress (via the Financial Ombudsman Service) should something go wrong.

Consumer debt generated outside of the financial services (FS) world – sometimes misleadingly called 'unregulated' debt – does not fall under the FCA's remit. Non-FS debt can be generated from many different sources: it can come from public sector organisations such as the HMRC or the DVLA; from the telcos, water companies or other major utilities; or it can be created by catalogue companies, mail order firms and other online retailers. None of these are 'financial services' (although some mail order firms may be regulated depending on how they set up their customer accounts – thus adding further confusion!) and as such they are not all bound by the same rules, regulations and principles as the rest. They are under no obligation, for example, to treat their customers fairly, nor do they have to conform to the niceties of such things as a 30-day breathing space for the most vulnerable.

Consumers in debt are typically indebted to four or five different organisations; they might – quite reasonably – expect to be treated consistently across the piece. In reality, however, whereas they

might be given forbearance and understanding in managing their credit card debt, the same is far from guaranteed in managing a utility debt, or dealing, perhaps, with their local authority.

Myth

If my creditor cannot prove when I went into default, they cannot take me to court and the default will be removed.

Fact

There is some basis of truth in this. It is the responsibility of the plaintiff in any potential court proceedings to prove their case, and this would include proving when a consumer went into default with the relevant/necessary documentation. However, it is only necessary for the creditor to demonstrate that the required statements/letters/correspondence was created/sent; they do not have to have proof of delivery. A customer who says that he never received a letter is not evidence that that letter did not exist. The message here is that customers should always keep copies of any document relating to a credit agreement: you never know when you might need it.

Myth

After six years, if I have not been contacted by my creditor, then I do not have to pay as it has become statute barred.

Fact

This is another myth. The definition of statute barred is an action, agreement or right that can no longer be the subject of legal action because the time limit imposed by the limitations act has been exceeded. In theory, therefore, if there has been no correspondence between a creditor and their customer within the time limit defined (they vary for different parts of the UK), no written acknowledgment that the debt is owing, and no repayments made, then the debt may indeed become statute barred. However, just because a debt can no longer be pursued through legal action does not mean that the debt can no longer be collected, neither does it mean that the debt is no longer owed. Unenforceable does not mean uncollectable.

Myth

Debt collectors are the most complained about people in the financial services industry, and the situation is getting worse.

Fact

We all take the view that even one complaint is one complaint too many, but debt collection agencies are in fact one of the least most complained about of any organisations working in the financial services sector.

In the 2013/14 review by the Financial Ombudsman Service (FOS), only 1% of complaints during that period were against businesses holding a consumer credit licence, and of that 1%, half of the

complaints made were actually upheld. The total number of complaints specifically related to debt collection stood at 557 for the year ended March 2014 – a fall of 32% year on year. This is out of a total number of enquiries and complaints received by the ombudsman of almost 2.4 million.

Myth

Each year thousands of people are pursued about debts that are not theirs. Debt collectors and credit reference agencies are doing nothing to reduce the incidences of a false positive trace (sometimes referred to as a mis-trace).

Fact

In reality, the number of false positive or mis-traces each year are surprisingly low, although if it were to happen to you, it is possible that a number of companies will follow the same trace results and therefore write to you also. It is this small number of cases which sometimes make headline news. Reducing this relatively low opportunity for inaccurate tracing, and by definition, their impact both on the customer and the industry at large, has been a major focus for the Credit Services Association in recent years, and is the specific responsibility of a dedicated working party within the organisation.

This working party, which comprises a number of leading cross-industry representatives and experts including tracers, debt buyers, debt collection agencies, credit reference agencies, and other like-minded associations, is tasked primarily with driving better standards, standards that will in turn reduce the numbers of avoidable mistakes and reduce customer detriment. Creditors themselves have also been engaged, as data errors can often result in wrong data being held on their systems that is not corrected.

A central role of the working party has been to potentially create a new set of rules. Examples include a proposed rule that a trace is not to be considered valid unless two independent sources of data or information have provided the same address for the individual being sought – and that only one of those sources can be a credit reference agency. Similarly a trace is not confirmed unless and until verbal contact has been made with the customer or a third-party known to them (subject to conditions around who it is acceptable to contact). Where an address has been identified for an individual, and that address is not in a reasonable vicinity of the last known address, further verification will be conducted to establish with reasonable confidence that the correct individual has been identified.

Crucially, the new rules additionally propose that individuals should be matched on a full name and date of birth basis only and that any addresses that have been reported to a client, or updated to the credit reference agencies and are later found to be erroneous, are to be reverse-reported such that the incorrect address is removed from the clients' and CRA's systems. Of course there is some way to go before the rules are adopted, but we are proactively engaged with the Information Commissioners Office (ICO) to deliver the improvements we are ultimately looking for.

To understand more about the current process of tracing, please take a look at the [tracing information sheet](#) produced by the Credit Services Association. It also contains guidance on correcting inaccurate information.

Myth

Companies that use a trading style are deliberately misleading consumers and the practice is illegal.

Fact

It is not illegal to use trading styles; it has been common practice in many industries for many years and still is. Neither is it true to say that use of a trading style is only ever with the intention of misleading the consumer. There is provision for the use of trading styles in the collections industry included in [rules devised by the Office of Fair Trading, the CSA Code of Conduct and the new FCA guidelines]. Trading styles have legitimate use in cases, for example, of 'trace', where the identity of a customer needs to be confirmed but the use of a collection agency's name might present issues regarding customer confidentiality and/or cause distress to a third party.

Myth

Debt Management Companies and Debt Collection Agencies are the same thing.

Fact

Debt Management Companies (DMCs) and Debt Collection Agencies (DCAs) are not one and the same. A Debt Management Company is an organisation that represents an individual in 'managing' his/her debt. They can be free or fee-charging, charities or businesses, and will typically negotiate with lenders (creditors) to reduce the total owed or lower monthly repayments for their customers. They should offer a range of solutions and recommend the most beneficial to the customer. They may negotiate a Debt Management Plan (DMP), a fixed agreement to help customers to reduce and ultimately eliminate their debt.

For those firms that charge a fee, the costs can be high and have to be met by the customer, ultimately taking them longer to pay off what's owed. The 'free' DMC sector is funded through charitable contributions by the creditor, so that any monies paid by the customer go to repaying their debt.

A Debt Collection Agency (DCA) is an organisation that collects debts on behalf of a third-party client (typically banks, building societies, credit card companies, mail order companies, utilities, mobile phone companies etc.). They operate for a fee or for a percentage of the total amount collected, which they receive from the creditor, not the customer.

The DCA contacts the customer to inform them of the amount due and to either set up an affordable repayment plan or determine that the customer is unable to repay the debt. If the customer requires help and advice with repaying the debt, the DCA may signpost them to free debt advice and they may go to a fee-charging DMC of their own accord. In this instance, the DCA will receive proposals from the free debt advice organisation or DMC and work with them on behalf of the customer to agree a settlement figure or a suitable Debt Management Plan.

As the UK trade body for the debt collection sector, the Credit Services Association (CSA) represents Debt Collection Agencies - not Debt Management Companies. Both we and our member companies advise customers to seek free debt advice from a not-for-profit debt advice body such as StepChange or Citizens Advice rather than a fee-charging DMC. This is in line with what regulator the FCA advises. There is widespread availability of free debt advice and the 'help with your finances' section of our website lists the key organisations.

Myth

The debt collection industry does not support the Fair Share scheme and it should do, because it makes lots of money out of the advice sector for doing no work.

Fact

This is not true but there are issues with the scheme that need to be addressed, notably about how Fair Share is currently being levied, and whether it is sustainable in the future. Debt collection agencies are almost universally supportive of the advice sector and prepared to evidence that support with a financial contribution. It has been argued, with some justification, that agencies that work with advisors enjoy the benefits of the relationship (ie payment plans have already been agreed without the need for further time spent on negotiation) but are then disinclined to pay for it. But that really isn't the case. In many cases the DCA's commission is insufficient to cover the Fair Share costs; put another way, the percentage desired by the advice sector often matches and even outweighs the amount an agency can charge in commission, which effectively means it will run at a loss on the affected accounts. The easiest change, and one that would require a simple operational amendment, would be for the owner of the debt (ie the debt purchaser, the bank etc) to pay the levy, leaving the collections agency out of it. Alternatively, an overall levy could be included as part of the Financial Conduct Authority (FCA) fee, given that DCAs already pay similar fees to support the Money Advice Service (MAS) and the Financial Ombudsman Service (FOS).

Myth

Debt collectors and bailiffs are the same thing – they can both come into your home and take your property away.

Fact

Debt collectors who come to your door and bailiffs are not the same, even though the media continually and unhelpfully confuses the two, which serves only to make customers even more nervous.

A **doorstep collector** will only come to your door if you have specifically asked for direct, face-to-face contact, or if you have ignored every other attempt to make contact with your creditors and they wish to create a dialogue. Sometimes doorstep collectors are simply used to verify that a property is still occupied – for example by a utility business. They have no right of entry, and will not attempt to enter your house unless invited to do so, and will certainly not be trying to seize your property.

A **bailiff** is different. A bailiff is a court appointed officer, sometimes known as an enforcement officer. His job is to recover a debt when a court has ruled that the debt is legally owed, and the customer has made no attempt to pay or engage with their creditors. In these cases, a bailiff actually has a legal obligation to recover the debt for the court, and does indeed have the legal right to seize goods to cover the value of the debt if the customer is still refusing to pay. The bailiff also has the right to recover the costs of collection, and any associated legal costs. A Bailiff cannot force entry into a residential premises on his first visit – this is a myth – but they are entitled to force entry into a commercial premises.

More information about bailiffs can be found in the [bailiff guidance document](#).

It is always advisable to engage with your creditors at the earliest possible moment, before it is outsourced to a third party and certainly before it ends up in court.

Myth

The Ministry of Justice's (MOJ's) proposals on the final steps that debt collection agencies and creditors must adopt in taking a customer to court (the so-called Pre-Action Protocol or 'PAP') will give consumers greater protection.

Fact

There is no doubt that the MoJ's intention is to provide greater protection. As its proposals currently stand, however, PAP may end up creating more issues than it solves, and leaving customers more confused about what will happen to them in the courts.

If the PAP proposals are followed through, then consumers will be sent a vast file of papers that they are obliged to read – documents, it should be noted, that they have already received and overlooked previously. Believing that customers will now consider them seems to fly in the face of the fact that currently c90% of claims issued go uncontested. The CSA feel that if the MoJ wants to protect consumers, it should do so by providing those consumers with clear information about what they can expect from the court process in a short, easy to read and digestible manner, addressing their concerns, and therefore avoiding the confusion that PAP may create.

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