



# THE UK INSOLVENCY HELPLINE

## HARASSMENT

# FACT SHEET 3

Harassment of people in debt by creditors or their agents is a criminal offence under the Administration of Justice Act 1970. It is often difficult to know what to do when you feel a creditor is not dealing with your account fairly. In order for you to identify what activities by your creditors may involve harassment and what can be done about the problem, this factsheet outlines:

- The relevant section of the Administration of Justice Act
- The Office of Fair Trading (OFT) Debt Collection Guidance on harassment
- How to deal with harassment by your creditors.

### SECTION 40 OF THE ADMINISTRATION OF JUSTICE ACT

*“S40 Punishment for unlawful harassment of debtors.*

(1) A person commits an offence if, with the object of coercing another person to pay money claimed from the other as a debt due under a contract he-

- (a) harasses the other with demands for payment which, in respect of their frequency, or the manner or occasion of making any such demand,

or of any threat or publicity by which any demand is accompanied, are calculated to subject him or members of his family or household to alarm, distress or humiliation;

- (b) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it;
- (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or
- (d) utters a document falsely represented by him to have some official character, or purporting to have some official character which he know it has not.

(2) A person may be guilty of an offence by virtue of sub-section (1) (a) above if he consents with others in the taking of such actions as is described in that paragraph, notwithstanding that his own course of conduct does not by itself amount to harassment.”

### OFFICE OF FAIR TRADING CODE OF GUIDANCE

Many activities could count as harassment. It is important to note that “anything done by a person which is reasonable” when trying to recover a debt, is not considered to be harassment. Both the Office of Fair Trading and trade associations (run by the credit industry) have produced guidance on what activities may be considered harassment and should therefore be avoided by creditors. The following list is taken from the new Debt Collection Guidance for holders of consumer credit licences.

Creditors are warned by the Office of Fair Trading under the Debt Collection Guidance that the following practices are "considered unfair":

***“IT IS UNFAIR TO COMMUNICATE, IN WHATEVER FORM, WITH CONSUMERS IN AN UNCLEAR, INACCURATE OR MISLEADING MANNER.”***

**This includes:**

- Letters that look like court claims
- Not making it clear who the company is or what their role is
- Unhelpful legal language
- Not giving balance statements about the debt when asked
- Contacting you at unreasonable times even when asked not to
- Asking you to contact them on premium rate phone numbers.

***“THOSE CONTACTING DEBTORS MUST NOT BE DECEITFUL BY MISREPRESENTING THEIR AUTHORITY AND/OR THE CORRECT LEGAL POSITION.”***

**This includes:**

- Claiming to work for the court or be a bailiff
- Implying action can be taken that is not legally possible such as implying they could take your property
- Using a business name or logo that implies they are a government body
- Implying that court action has been taken against you when it hasn't
- Implying not paying your debt is a criminal offence
- Threatening to take court action in England if you live in Scotland or the other way round.

***“PUTTING PRESSURE ON DEBTORS OR THIRD PARTIES IS CONSIDERED TO BE OPPRESSIVE.”***

**This includes:**

- Contacting you too frequently
- Pressurising you to sell property or take out more debt
- Using more than one collection company at the same time or not telling you when your debt has been passed to another company
- Pressurising you to pay in full or in large instalments you cannot afford
- Making threatening gestures or statements

- Ignoring disputes about whether you owe the money
- Trying to embarrass you in public or threatening to tell a third party about your debts such as a neighbour or your family.

***“DEALINGS WITH DEBTORS ARE NOT TO BE DECEITFUL AND/OR UNFAIR.”***

**Examples include:**

- Sending letters addressed to “the occupier” or discussing the debt with someone without knowing if they are you
- Refusing to deal with an adviser acting on your behalf
- Not accepting reasonable offers or passing on payments you make
- Refusing to freeze action if you dispute the debt.

***“CHARGES SHOULD NOT BE LEVIED UNFAIRLY.”***

**Examples include:**

- Claiming collection costs when the original credit agreement didn't allow this to happen and making you think you are legally liable for the costs
- Not putting the specific amounts that can be added for collection costs in the original credit agreement
- Adding unreasonable charges.

***“THOSE VISITING DEBTORS MUST NOT ACT IN AN UNCLEAR OR THREATENING MANNER.”***

- Collectors should explain the reason for any visit and give you notice of the time and date they will call
- They shouldn't visit if they know you are ill or vulnerable and if they find you are unwell or distressed they should leave
- They should not come in if you do not want them to and should leave when you ask them to
- They shouldn't visit you at work or somewhere like a hospital.

## HOW TO DEAL WITH HARASSMENT BY YOUR CREDITORS

- The first step is to write to a creditor and outline your concerns about the company's behaviour. Inform them that you are familiar with the terms of *Section 40 of the Administration of Justice Act* and ask that the creditor takes steps to avoid similar occurrences in the future. Tell your creditors how you would prefer to be contacted and ask that they confirm their agreement to this. A letter at this stage may avoid the need to take further action against the company.
- Tell them you are aware of the OFT Debt Collection Guidance and that you will consider making a complaint about their behaviour under the guidance.
- It is usually difficult to persuade the police to prosecute in cases of harassment unless a more serious offence such as violence, fraud or blackmail is also involved. Normally complaints should be made to the trading standards/consumer protection department at your local council. They should investigate whether an offence has been committed and whether prosecution is appropriate. The penalty is a fine of up to £5,000 in the Magistrates Court. Also a conviction is likely to provide evidence that the creditor is no longer a 'fit and proper person' to hold a consumer credit licence.
- If Trading Standards will not act it may be worth contacting the Office of Fair Trading directly. The address is at the end of the factsheet. The OFT does not usually take up individual complaints but their Debt Collection Enforcement Team collects information that can be used to take action against creditors who can lose their consumer credit licence.
- The creditor may be a member of a trade association with a code of practice. You could find out if your creditor is a member of a trade association and write to them with your complaint. A code of practice is not legally enforceable but the association may take some action against their members. Details of the

main trade associations are at the end of the factsheet under "Useful Addresses".

## OTHER OPTIONS

- Another alternative is for you to pursue your own prosecution in the Magistrates Court. This could involve considerable cost so you need to obtain proper legal advice first.
- BT have a new service called "Choose to Refuse" which might help if you are getting a lot of calls from an unpleasant creditor. You have to key in a pin number after a call. The caller will then get an automated message if you don't wish to take their call when they ring. The cost of the service is £8.00 per quarter.
- If you receive a telephone service from another provider, contact them and ask if they have a similar service.
- You could refer to the Malicious Communications Act 1988. This deals with the sending of letters or articles for the purpose of causing "distress or anxiety". A person found guilty can be fined in the Magistrates Court. To prosecute successfully, the letter or article sent would have to convey:-
  - A message which is indecent or grossly offensive
  - A threat; or
  - Information which is false and known or believed to be false by the sender.
- The Criminal Justice Act & Public Order Act 1994 Section 4a makes it a criminal offence to cause "*Harassment, alarm or distress*" with intent by using "*threatening, abusive or insulting words or behaviour*". This can only be an offence if it happens in a public place not in your own home. The police would need to be contacted and prosecute for this offence.
- The Protection from Harassment Act 1997 makes it a criminal offence to harass people and put "people in fear of violence".

- The harassment must happen on at least 2 separate occasions. The police would have to agree to prosecute for this offence.

## USEFUL ADDRESSES

The Finance & Leasing Association (FLA)  
 2<sup>nd</sup> Floor, Imperial House  
 15-19 Kingsway  
 London WC2B 6UN  
 Tel No: 020 7836 6511  
[www.fla.org.uk](http://www.fla.org.uk)

The Consumer Credit Trade Association (CCTA)  
 Suite 8, The Wool Exchange  
 10 Hustlergate  
 Bradford  
 BD1 1RE  
 Tel: 01274 390 380  
[www.ccta.co.uk](http://www.ccta.co.uk)

Credit Services Association Ltd (CSA)  
 (For Debt Collection Agencies)  
 Wingrove House  
 2<sup>nd</sup> Floor East  
 Ponteland Road  
 Newcastle upon Tyne  
 NE5 3DP  
 Tel: 0191 286 5656  
[www.csa-uk.com](http://www.csa-uk.com)

Consumer Credit Association (CCAUK)  
 Queens House  
 Queens Road  
 Chester CH1 3BQ  
 Tel No: 01244 312 044  
[www.ccauk.org](http://www.ccauk.org)

Mail Order Traders' Association (MOTA)  
 7 Floor  
 100 Old Hall Street  
 Liverpool  
 L3 9TD  
 Tel: 0151 227 9456  
 (No website)

Office of Fair Trading  
 Fleetbank House  
 2 – 6 Salisbury Square  
 London  
 EC4Y 8JX  
 Tel No: 08457 224 499  
[www.oft.gov.uk](http://www.oft.gov.uk)

If your complaint is against a solicitors firm acting for a creditor, a complaint can be made to:

Consumer Complaints Service  
 The Law Society  
 Victoria Court  
 8 Dormer Place  
 Leamington Spa CV32 5AE  
 Tel No: 0845 608 6565  
[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

**REMEMBER: You can always contact us for advice about any difficulty you have in dealing with your debts.**

**Freephone: 0800 074 6918**  
**Website: [www.insolvencyhelpline.org](http://www.insolvencyhelpline.org)**

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