
STATES OF JERSEY



DEBT COLLECTION AGENCIES: REPORT OF WORKING PARTY

Presented to the States on 20th March 2012
by the Minister for Economic Development

STATES GREFFE

REPORT

Background

This Report follows the proposition lodged by Deputy M. Tadier of St. Brelade on 6th June 2011 (P.102/2011) to request the Minister –

- (a) to establish a Working Party to examine the current operation of debt collection agencies in Jersey and to consider the creation of a code of practice for such agencies to ensure that they operate according to best practice;
- (b) to appoint at least 2 States members as members of the Working Party and to take the necessary steps to appoint other members with relevant skills and experience, including representatives of the debt collection industry and representatives of groups representing the interests of consumers;
- (c) to present the report of the Working Party to the States once the Working Party has concluded its work.

The Minister fully supported the proposition and chaired the first meeting of the Working Party in September 2011.

Composition of the Working Party

Deputy M. Tadier of St. Brelade and Senator F. du H. Le Gresley were appointed as the 2 States members.

The meeting was very well attended by representatives from 5 Debt Collection Agencies, as well as representation from the Citizens Advice Bureau and Trading Standards.

The Manager of the Citizens Advice Bureau agreed to chair future meetings and oversee the work of the group.

Working Party Membership

Deputy M. Tadier of St. Brelade
Senator F. du H. Le Gresley
Working Party Chairman – Mr. M. Ferey, Citizens Advice Bureau
Miss A. de Bourcier, Trading Standards Service
Mr. M. Williams, Collect Services Limited
Mr. P. Boots, Cashback Limited
Mr. S. De Mouilpied, Resolve C.I. Ltd.
Ms. E. Atkinson, Chancellors Debt Recovery Limited
Mr. S. Hill, Hillbury Collection Services

The basis for a Code of Conduct

In 2011, the Minister for Economic Development published a Consultation Green Paper on the introduction of a new consumer protection Law. This followed the introduction in the United Kingdom (UK) of the Consumer Protection from Unfair Trading Regulations in 2008, which was a legal obligation flowing from the implementation of the Unfair Commercial Practices Directive.

With this work in train and mindful that any future legislation would regulate some aspects of debt collection, the group were keen to expedite a voluntary Code of Conduct.

This document would then form a useful guide and reference in determining professional diligence under the proposed new Law.

The Code is modelled around the debt collection guidelines issued by the UK Office of Fair Trading and the UK Credit Services Association Code of Practice.

Five Debt Collection Agencies in Jersey have already agreed to subscribe to the Jersey Code from 1st March 2012.

The scope is sufficiently wide to allow other organisations who are involved in their own debt collection activities to consider subscribing.

Overview of the Code

The code contains 7 sections dealing with different aspects of debt collection activities. In summary, these are –

1. **General Code of Conduct**
To ensure subscribers act responsibly and with integrity in the day-to-day conduct of its business.
2. **Confidentiality**
To ensure subscribers keep information in the strictest of confidence and adhere to the Law and fundamental principles of Data Protection.
3. **Complaints**
Have an adequate complaints procedure and advise complainants of all of the other remedies available including referral to –
 - the Trading Standards Service where it appears that the subscriber has not complied with this Code;
 - the Office of the Data Protection Commissioner for data protection related complaints;
 - the Jersey Citizens Advice Bureau who provide debt advice and have an online self-help debt pack at www.cab.org.je.

4. **Default Guidelines**
Follow clear industry standards in attempting to carry out collection in default of payment.
5. **Trace Guidelines**
Ensure subscribers are circumspect and take all steps to verify that the person traced is in fact the debtor.
6. **Purchased Debt Guidelines**
Timely advise consumers when debt has been assigned and to whom.
7. **Subscribing to this Code**
Reconfirm to the Code every 24 months and display a certificate of compliance.

Monitor and Review

Subscription will be managed by the Trading Standards Service in the same way that they manage subscribers to the *Code of Practice for Consumer Lending*.

Subscribers must ensure they make the Code available on their own website and provide a copy to debtors promptly on request. It will also be available on the States of Jersey website.

Complaints relating to non-compliance will be directed to the Trading Standards Service for investigation.

The Working Party has agreed to review the Code from time to time to ensure it reflects current best practice.

A copy of the Code of Conduct for Jersey Debt Collection is attached at the **Appendix** to this Report.

**Code of Conduct
for Jersey
Debt Collection**

Background

There are principles of consumer protection and fair business practice which apply to all debt recovery activities.

In general terms, businesses should:

- treat debtors fairly
- be transparent in their dealings with debtors
- exercise forbearance and consideration
- act proportionately when seeking to recover debts
- establish and implement clear, effective and appropriate policies and procedures for engaging with debtors and other relevant parties, including having appropriate mechanisms for responding to reasonably queried and disputed debt and complaints

The following Code of Conduct for Jersey Debt Collection supports these principles thus encouraging debtors to manage their financial affairs, safe in the knowledge that they will be dealt with in a professional and respectful manner.

This Code is modelled around the Credit Services Association Code of practice and also incorporates Codes and guidelines issued by the UK's Office of Fair Trading and the Data Protection Commissioner under the Data Protection (Jersey) Law 2005.

I. General Code of Conduct

Each subscriber of this Code shall act responsibly and with integrity in the day-to-day conduct of its business.

- a) Comply with this Code of Conduct.
- b) Conduct its business lawfully, comply with all relevant legislation, regulation and judicial decisions and trade fairly and responsibly.
- c) Conduct its business under a name, title or style which will not confuse or mislead clients, creditors, debtors or subscribers of the public, or which will not imply any association with other organisations or persons, which do not exist.
- d) Comply with the Code of Practice and guidelines on the processing of personal data for credit purposes issues by the Data Protection Commissioner.
- e) Provide adequate training for subscribers of its staff, bringing to their attention the principles of this Code and requiring them to carry out their duties in accordance with it. Also, ensure continuous and appropriate training of staff in respect of current legislation and best practice.

- f) Use plain English in all communications.
- g) Show on all letters, postcards and forms the full business address, telephone number and email address, where used.
- h) In all contacts by staff, ensure that the subscriber's identity is clearly disclosed.
- i) Ensure by continuously examining debt collection procedures, and those of any third parties employed, that they conform to the highest ethical standards.
- j) Comply with all reasonable requests by debtors, clients or their appointed representatives for information concerning their agreements and accounts.
- k) Ensure the Code is available on their own website where they have one. They shall further ensure that a copy of the Code is supplied promptly upon request.

2. Confidentiality

Subscribers must keep in strict confidence any information supplied by the debtors or their chosen third party, except where disclosure is authorised by the debtor or others permitted or required by law or by Order of the Royal Court.

3. Complaints

- a) Each subscriber shall have in place adequate processes to deal with debtors complaints, this must contain the following minimum procedure:
 - I. The Management level at which complaints are handled.
 - II. The time frame in which complaints are handled.
 - III. The remedy, if the complainant is not satisfied.
 - IV. Complainants must be advised that other remedies include referral to:
 - the Trading Standards Service where it appears that the subscriber has not complied with this Code,
 - the Office of the Data Protection Commissioner for data protection related complaints,
 - the Jersey Citizens Advice Bureau who provide debt advice and have an online self help debt pack at www.cab.org.je
- b) Subscribers shall deal with complaints speedily, responsively, in a user-friendly fashion and at an appropriate management level.
- c) Subscriber's complaints procedures must be made available to the complainant or his/her advisor on request.

4. Debt Collection & Default Guidelines

The following set of guidelines is intended as an indication of the procedures to be adopted by subscribers. It is not intended as an exhaustive directive to subscribers.

In attempting to carry out collection in default of payment, subscribers of the Code should:

- a) Not use oppressive or intrusive collection procedures.
 - b) Not bring unreasonable pressure to bear on the debtor in default of payment.
 - c) Not act in a manner in public intended to embarrass the debtor.
 - d) Be circumspect and discreet when attempting to contact the debtor by telephone, text, email or by personal visit.
 - e) Ensure that all attempted contacts with debtors are made at reasonable times and at reasonable intervals.
 - f) Respect debtors' legitimate wishes in respect of when and where to contact them. Legitimate wishes include;
 - shift workers who ask not to be telephoned during certain times of the day,
 - only visiting debtors at work upon request.
 - g) Accept all reasonable offers by debtors to pay by instalments, provided acceptable evidence of non-ability to pay is given.
 - h) Not use *improper*¹ means to obtain the telephone number and address of a debtor and treat all information supplied as private and confidential unless specific authorisation has been given by the debtor to disclose information to third parties.
- ¹ *Improper in this connection would refer to actions in breach of relevant legislation or in breach of this Code.*
- i) In respect of 4(h) above, have specific regard to Article 55 of the Data Protection (Jersey) Law 2005 as regards the unlawful obtaining or disclosing of personal data.
 - j) Not pressurise debtors to sell property or to raise funds by further borrowing.
 - k) Not falsely imply by written or verbal means that criminal proceedings will be brought, nor that civil action has or will be instituted where subscribers are unable to do so due to legal restrictions.
 - l) Ensure that collectors who use pseudonyms can be identified within the subscribers' organisation.
 - m) Have due regard and deal sensitively with individuals where evidence has been given, or is apparent, that the individual is incapacitated by mental or physical disability.
 - n) Offer co-operation with the debtor's nominated or chosen Third Party, such as the Citizens Advice Bureau.
 - o) Encourage debtors in financial difficulties to inform subscribers of their difficulties and then respond sympathetically and positively on the evidence provided.

- p) Take into consideration before determining whether to enforce repayment, all information supplied in relation to the reason for non-payment, which may include *The Common Financial Statement*², or the debtor's future ability to repay. If the debtor has disclosed multiple debt problems, inform them of the availability of accredited advisory services. Where available, provide in all relevant correspondence the name or designation of a specially trained subscriber of staff who may be contacted regarding financial difficulties.

²*The Common Financial Statement is a budgeting tool which produces an accurate overview of a person's income, expenditure, assets and liabilities.*

- q) Where a debt or the sum owed is disputed, as soon as is practicable, supply information to the debtor in support of the claim. Where no information has been supplied by the creditor, obtain the required support, or failing that cease collection action.

5. Trace Guidelines

Each subscriber shall:

- a) In all contact, be circumspect and act with full regard to the Data Protection principles.
- b) Take all possible steps to verify that the person traced is in fact, the debtor.
- c) Verify data relating to a debtors whereabouts via one or more of the following methods:
 - I. Public databases.
 - II. Sending soft letters.
 - III. Contacting other people.
 - IV. Investigative/Field enquiries.
- d) Cease contact should it become apparent that the located person is not the debtor, and carry out further checks.

6. Purchased Debt Guidelines

Each subscriber shall:

- a) Timely advise the consumer in writing that the debt has been assigned and that the debt should now be settled with the assignee.
- b) Adhere to all relevant requirements under any other relevant legislation.
- c) In debt collection or trace activity comply with all the principles of this code.

7. Subscribers to this Code

Further copies and an up to date list of subscribers to this Code of Conduct is available at:

www.gov.je/debtcollection

Subscribers are required to re-affirm to this Code every 24 months and must display a certificate of compliance with this Code on their premises.

For further information relating to this Code of Conduct, please contact

Trading Standards Service

9-13 Central Market

St Helier

Jersey JE2 4WL

Tel: +44 (0) 1534 448160

Facsimile: +44 (0) 1534 448175

E-Mail: tradingstandards@gov.je

Other contacts

Citizens Advice Bureau

St Paul's Gate

New Street

St Helier JE2 3WP

Tel: +44 (0) 1534 724942 or 0800 735 0249

Facsimile: +44 (0) 1534 617508

www.cab.org.je

Office of the Data Protection Commissioner

Morier House

Halkett Place

St. Helier JE1 1DD

Tel: +44 (0) 1534 441064

Facsimile: +44 (0) 1534 441065

E-Mail: dataprotection@gov.je

Credit Services Association

www.csa-uk.com

Office of Fair Trading

www.oft.gov.uk