What is harassment?

If you do not pay your debts, your creditors are allowed to ask you to pay and keep reminding you to pay from time to time. This will not usually count as harassment. However, they must not act illegally. This fact sheet will help you identify what behaviour by your creditors may count as harassment and what you can do about it. The fact sheet covers:

- how the Consumer Credit sourcebook (CONC) of the Financial Conduct Authority (FCA) can help you with harassment;
- how the Consumer Protection from Unfair Trading Regulations 2008 can help you; and
- how to deal with harassment by your creditors.

FCA’s Consumer Credit sourcebook

The FCA’s Consumer Credit sourcebook (CONC) must be followed by all companies which offer some form of credit to consumers. They must be authorised by the FCA. This includes banks, credit card companies, payday lenders, law firms, debt collectors and tracing agents.

From 1 April 2014, consumer credit companies must have registered with the FCA for ‘interim permission’ which allows them to carry out consumer credit-related activities. Search the Interim Permission Consumer Credit Register to see if your company has interim permission. You can search using the company’s name, its postcode or its Interim Permissions Reference Number.

All firms with interim permission will need to apply for full authorisation from the FCA during the period from 1 October 2014 to 31 March 2016.

In the Consumer Credit sourcebook (CONC), the FCA sets out the kind of activities and behaviour by these companies that they consider to be an unfair or improper business practice. The rules and guidance say that creditors should:

- treat you fairly;
- be clear about what they are doing; and
- give you ‘reasonable’ time to repay your debts. What is reasonable will depend on your circumstances. Your creditors may still refuse your offers without breaking the rules or guidance.

See the full rules and guidance on the FCA website, or contact us for advice.
Unfair or improper business practices

The FCA says that the following practices are considered unfair or improper.

Communication

This includes:

- sending letters that look like court claims;
- not making it clear who the company is or what their role is;
- using unhelpful legal language;
- not giving balance statements about the debt when asked;
- not letting you know the outcome if you have disputed or queried the debt;
- contacting you at unreasonable times even when asked not to; and
- asking you to contact them on premium rate phone numbers.

False representation of authority

This includes:

- claiming to work for the court or be a bailiff;
- making you think action can be taken that is not legally possible. For example, that they could take your property, enter your home or enforce a judgment without having authority;
- using a business name or logo that leads you to think they are a government body, a court or a solicitor;
- leading you to believe that court action has been taken against you when it hasn’t;
- leading you to believe that not paying your debt is a criminal offence; and
- threatening to take court action in England if you live in Scotland or the other way round.
Information:
what the FCA says

“A firm must not pressurise a customer:
(1) to pay a debt in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer's financial circumstances;
(2) to pay a debt within an unreasonably short period of time; or
(3) to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.”

Consumer Credit sourcebook (CONC) 7.3.10

Physical or psychological harassment

This includes:

- contacting you too frequently or at unreasonable times;
- 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;
- not passing on a history of your debt including any payment arrangement you have;
- pressuring you to pay in full or in large instalments you cannot afford over an unreasonably short time;
- not giving you a reasonable time to seek advice or put forward payment proposals;
- refusing a reasonable offer of payment from you or an adviser;
- making threatening gestures or statements;
- ignoring disputes about whether you owe the money;
- trying to embarrass you in public. For example, using social networking sites or leaving inappropriate phone messages. This could also include threatening to tell a third party such as a neighbour or your family about your debts; and
- continuing to pursue the debt where it is clear you might have mental health problems which mean you cannot deal with your debts at that time.

Deceptive and unfair methods

This includes:

- 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;
- inappropriately passing your details on to debt management companies, brokers or creditors;
- not accepting reasonable offers or passing on payments you make;
- trying to enforce the debt if you are in a debt payment scheme such as a debt relief order or an individual voluntary arrangement;
- refusing to freeze action or failing to investigate if you dispute the debt; or
- trying to take larger or more frequent payments than you have agreed from your account using a continuous payment authority.
Charging for debt recovery

This includes:

- 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 clearly stating the amount that can be added for collection costs in the original credit agreement; and
- adding any unreasonable charges.

Debt collection visits

This includes:

- not explaining the reason for any visit and not giving you notice of the time and date they will call;
- not visiting you if they know you are ill or vulnerable. This includes leaving if they find you are unwell or distressed;
- not coming in to your home if you do not want them to and leaving if you ask them to; and
- not visiting you at work or somewhere like a hospital.

Statute-barred debts

If a debt is barred under statute, it means that by law (the Limitation Act 1980), the lender has run out of time to use certain types of action to try and make you pay the debt. It does not mean the debt no longer exists. The amount of time a creditor has is called a ‘limitation period’. Different debts have different limitation periods, and this area of law can be complicated. If you think you have a debt that might be statute-barred, contact us for advice.

The Consumer Credit sourcebook (CONC) says that the following practices are considered unfair or improper when dealing with statute-barred debts:

Information:
what the FCA says
“A firm must not claim the costs of recovering a debt from a customer if it has no contractual right to claim such costs.”
Consumer Credit sourcebook (CONC) 7.7.2

Information:
what the FCA says
“A firm must ensure that all persons visiting a customer’s property on its behalf...do not...act in a threatening manner towards a customer...”
Consumer Credit sourcebook (CONC) 7.9.14

Information:
what the FCA says
“...a firm must not attempt to recover a statute barred debt in England, Wales or Northern Ireland if the lender or owner has not been in contact with the customer during the limitation period.”
Consumer Credit sourcebook (CONC) 7.15.4

My Money Steps is our free, independent and confidential online debt advice service. My Money Steps will help you work out a budget and give you a personalised action plan setting out practical steps to deal with your debts.

www.mymoneysteps.org

Freephone 0808 808 4000
www.nationaldebtline.org
The Consumer Protection from Unfair Trading Regulations 2008

What are these regulations?

These rules are designed to stop traders acting unfairly, including the use of what the rules call ‘aggressive commercial practices’. Trading standards has the power to take enforcement action against creditors if they break these rules. Examples of unacceptable behaviour are:

- a debt collector pressurising you to repay a debt by contacting you at unreasonable times such as late at night or at unreasonable locations such as your workplace; and
- a debt collector threatening you with action, such as the use of bailiffs, to recover money for unenforceable debts.

If you think you may have a complaint about your creditor under these rules, contact the Citizens Advice consumer service. See the Citizens Advice consumer service and Trading Standards and Useful contacts sections later in this fact sheet.

How to deal with harassment by your creditors

Contact the creditor

- The first step is to write to the creditor and explain your concerns about the company’s behaviour. Use the Creditor harassment warning sample letter near the end of this fact sheet.
- Tell your creditors how you prefer to be contacted. Ask them to confirm their agreement to this.
- A letter sent by recorded delivery at this stage may avoid the need to take further action against the creditor.
- Tell them you are aware of the Consumer Protection from Unfair Trading Regulations 2008 and the FCA Consumer Credit sourcebook, and that you will consider making a complaint about their behaviour using these.
It is worth keeping a diary of phone calls, letters, and visits and so on. Use our creditor contact diary at the end of this fact sheet.

It is helpful if another person can confirm what happened, for example when the collector called at your home.

You may want to politely but firmly refuse to let a collector in, or not answer the phone to the collector until the problem is sorted out.

Citizens Advice consumer service and Trading Standards

If you want to make a complaint, you can contact the Citizens Advice consumer service. See Useful contacts later in this fact sheet. They will give you advice over the phone or by email. They can put you in touch with the trading standards department in your local council if you need more detailed or face-to-face advice.

Trading standards can 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. A conviction is also likely to provide evidence that the creditor is no longer a suitable company to be authorised by the FCA.

The Financial Ombudsman Service (FOS)

You can complain to the Financial Ombudsman Service (FOS) about how a creditor or debt collection agency has behaved when dealing with your account. The service is free and independent. FOS will look at your complaint and decide if the creditor or debt collection agency has treated you fairly. FOS can order the company to put things right, and even order them to pay you compensation. You must complain to your creditor or debt collection agency first. See Useful contacts later in this fact sheet.

Financial Conduct Authority (FCA)

It may be worth contacting the Financial Conduct Authority (FCA) directly on the Consumer Helpline. See Useful contacts later in this fact sheet. The FCA does not take up individual complaints, but collects information that can be used to take action against creditors. The FCA has extensive powers, which include being able to:

- withdraw a company’s authorisation;
- stop a person working in financial services;
- suspend a firm for up to 12 months;
- publicise what a company has done wrong; and
- give the company a financial penalty.
Trade associations

The creditor may be a member of a trade association with a code of practice. Find out if your creditor is a member of a trade association and contact them with your complaint. A code of practice is not legally enforceable, but the association may take some action against their members. See Useful contacts later in this fact sheet.

Loan sharks

Loan sharks are money lenders who do not have a licence. This means they are acting illegally. They usually charge very high rates of interest and use violence or threats to make you pay.

Other options

Blocking telephone calls

If you are a BT customer and you are finding it difficult to deal with telephone calls from your creditors, the ‘Choose to refuse’ service might help you. The service allows you to refuse calls from up to 10 different numbers. There is usually a cost for this service. See Useful contacts later in this fact sheet. If you have a different phone provider, contact them and ask if they have a similar service.

Legal options

You could consider the following options in very serious cases of harassment or other illegal behaviour by your creditors. It is very important to get proper legal advice about these options, as they are complicated and can be costly. Contact us for advice.

Malicious Communications Act 1988

This deals with sending letters or articles for the purpose of causing “distress or anxiety”. If your creditor is found guilty, they can be fined in the magistrates’ court. To prosecute your creditor successfully, the letter or article sent would have to contain:

- 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.

Section (4) (a) of the Criminal Justice Act & Public Order Act 1994

This makes it a criminal offence to deliberately cause “harassment, alarm or distress” 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. You would need to contact the police who would have to make a decision about whether or not to prosecute for this offence.
Protection from Harassment Act 1997

This makes it a criminal offence to harass people and put “people in fear of violence”. The harassment must happen on at least two separate occasions. The police would have to agree to prosecute for this offence.

Useful contacts

BT
For details of ‘Choose to refuse’ service.
Phone: 0800 800 150
www.bt.com

Citizens Advice consumer service
Helpline for consumer, fuel or post problems.
Phone: 0845 404 0506
www.adviceguide.org.uk

Financial Conduct Authority (FCA)
Regulator for financial services such as payday lenders, banks, credit companies, insurance companies and mortgage lenders.
Phone: 0800 111 6768
Email: consumer.queries@fca.org.uk
www.fca.org.uk

Financial Ombudsman Service
For complaints about banks and other creditors
Phone: 0800 023 4567 or 0300 123 9123
Email: complaint.info@financial-ombudsman.org.uk
www.financial-ombudsman.org.uk

Legal Ombudsman
Organisation to contact about complaints to do with solicitors.
Phone: 0300 555 0333
Email: enquiries@legalombudsman.org.uk
www.legalombudsman.org.uk

Stop Loan Sharks
Advice on how to deal with loan sharks - unauthorised money lenders
Phone: 0300 555 2222 if you live in England or 0300 123 3311 if you live in Wales
Email: reportaloanshark@stoploansharks.gov.uk if you live in England or imlu@cardiff.gov.uk if you live in Wales.
www.gov.uk/report-loan-shark

My Money Steps is our free, independent and confidential online debt advice service. My Money Steps will help you work out a budget and give you a personalised action plan setting out practical steps to deal with your debts.
www.mymoneysteps.org

Freephone 0808 808 4000
www.nationaldebtline.org
Trade associations

Consumer Credit Association
Association for home credit lenders.
Phone: 0124 431 2044
www.ccauk.org

Consumer Credit Trade Association
Members include banks, payday loan companies, mortgage lenders and debt collectors. Use their website to check if your creditor is a member.
Phone: 0127 471 4959
www.ccta.co.uk

Consumer Finance Association
Association for payday loan companies.
Phone: 020 3178 7408
www.cfa-uk.co.uk

Credit Services Association
Association for debt collection agencies. Use their website to check if your creditor is a member.
Phone: 0191 217 0775
Email: info@csa-uk.com
www.csa-uk.com

Finance & Leasing Association
Association for a range of consumer lending companies. Use their website to check if your creditor is a member.
Phone: 020 7836 6511
www.fla.org.uk
Creditor harassment warning sample letter

Write your own letter

Use this letter to tell your creditor if you think they are harassing you, and ask them to stop.

(Your home address)
Date: ______________

Dear Sir/Madam

Account No: _____________________

Further to your recent telephone calls/letters/visits, I am/we are writing because I/we think your behaviour towards me/us in trying to collect the debt is unreasonable and could be considered to be harassment.

I/we have been advised that, under the Financial Conduct Authority's Consumer Credit sourcebook, it is an unfair and improper business practice to:

(Explain here exactly which types of behaviour you are complaining about. Give specific examples, with dates, times and locations if possible. Or, if you have used our creditor contact diary, send a copy of this.)

I/we would be grateful if you would stop trying to recover the debt in this manner. I/we request that in future you contact me/us by letter only and stop the behaviour I/we have outlined above.

If you ignore this request or do not change your behaviour, I/we will make a formal complaint to the following body: Citizens Advice consumer service/Trading standards/the Financial Conduct Authority/the Financial Ombudsman Service/the Legal Ombudsman/trade association. (Use the information in this fact sheet to decide which body it is most appropriate for you to complain to. If you are not sure, contact us for advice.)

I/we look forward to hearing from you.

Yours faithfully

(Your signature)

Remember:
keep a copy
Keep a copy of all the letters you send to your creditors.
Sample creditor contact diary

Use this diary to record every time your creditor contacts you, whether by phone, letter, or visit. This will help to show if you are being harassed.

<table>
<thead>
<tr>
<th>Name of creditor or debt collection agency</th>
<th>Date and time of contact</th>
<th>Details of contact, for example, type of contact, what the creditor asked for and so on</th>
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National Debtline endeavour to keep our fact sheets as up-to-date as possible, however, we cannot be held responsible for changes in legislation or for developments in case law since this edition of the fact sheet was issued.