

THE LAW OF UNINTENDED CONSEQUENCES



Pierre Haincourt examines the negative impact of changes to the debt collection industry and how it is being regulated

BEFORE 1 April 2014 everything was going quite well. Our regulator kept raising the bar and collection agencies were continuously improving their standards. We witnessed the introduction of the Debt Collection Guidance and welcomed every subsequent review that kept debt collectors on their toes. And we did more.

We embraced the reinforcing of the Consumer Credit Licence application process that went a long way to ensuring that new entrants to our industry were professionals who had not only the know-how, but also an ethical approach to collecting debts. Overall there was a good mix: a licensing regime and a self-regulated market that not only worked quite well but was actually used as a model for others in Europe. All of this came at an affordable price, even though many would have been prepared to pay slightly more to give our regulator the enforcement capability they lacked. Personally, I will miss the Office of Fair Trading (OFT).

Under the OFT, the Credit Services Association (CSA) was more than playing its part and there was a true partnership with the OFT and a commitment on both sides of the fence to improve standards and ethics. One only has to spend a few minutes on the CSA website to see what a great job it has been doing to continuously improve training programmes, public affairs and public relations campaigns, and everything else besides. All of this work is done to ensure debt collection agencies, which play a huge role in the economy, continue to have the right approach and to collect debts whilst treating debtors fairly, and to tell everyone about it.

POISSON D'AVRIL

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The FCA handbook is not specifically relevant to the debt collection industry. It is for all consumer credit regulated firms. It is so large that nobody seems to know how many pages it contains. The focus of the FCA is clearly on companies selling financial services. Debt Collection agencies do not sell anything, and even if some inventive thinkers want us to believe that we sell repayment plans, I don't buy this; we don't sell anything.

With all this new mass of information to process, convert, translate and understand, the large collection agencies, servicers of the financial sector, have had to reinforce their compliance teams, and the others who can only afford a part-time consultant have had to put the growth of their small business on the back burner and stop creating jobs for a while.

Just to be clear, the FCA is only concerned with consumer credit regulated debts. Who can blame them? Given that the financial services sector forms such a large part of the UK economy, and is by far the largest provider of debts to be collected, it is probably right that it should seek to protect its customers all the way, from the moment they sign the credit agreement, to the end of the collection process. Nevertheless, the UK collection industry is now faced with serious unintended consequences.

LESS PROTECTION

I have spoken to several FCA representatives over the past year pointing out that the debtor (they say customer nowadays) they are seeking to protect better against unfair collection practices, also has non-financial debts. Who knows how that same debtor will now be treated if he omits to pay his phone bill or his Child Support Maintenance.

It is clear to me that debtors are now far less well protected and our industry is in a much more vulnerable place as a result of these changes. This two-tier market may not do much for our image either.



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Within two years of the end of the FCA authorisation process, I would not be surprised if the increased cost of compliance kicks many of the smaller collection agencies out of the regulated debt collection sector. Some will just be bought by larger players and mergers and acquisitions (M&A) will continue to increase within the UK and across borders. I sense a feeling of insecurity in the industry at the moment. Maybe this will go as agencies clear the authorisation process.

Returns will fall further as the cost of compliance increases and unless the remuneration package of DCAs changes from a commission-only basis – which does not automatically amount to bad practice – to other remuneration models, it will become increasingly difficult to make a profit.

The consumer credit sector will suffer as the smaller, faster growing and job creating agencies will become an endangered species, returns will decrease and who knows, another bubble may burst.

UNDESIRABLE NEWCOMERS

At the same time, our newly created unregulated, unlicensed debt collection market won't fail to attract more aggressive collection methods and all debtors won't be treated in quite the same way. I am not saying that the current players will change their collection methods, but this opportunity will inevitably attract undesirable newcomers to our industry.

Foreign Collection Agencies like El Cobrador del Frac, the famous Spanish

collection agency which built its reputation on using public shaming as its main collection technique, or Moskau Inkasso currently getting noticed in Germany for its very convincing doorstep collection methods, are probably already watching this space.

The move to the FCA has already started to divide our industry. The CSA, which had worked so hard for the industry as a whole was forced to choose sides. It's a difficult call but when the bulk of the membership fees come from the regulated side of the industry, the outcome was to be expected. Firstly, the CSA removed the words 'debtor' and 'debt' from the code of conduct and replaced them with the words 'customer' and 'credit'. Then, it merged the CSA and the DBSG. I wonder if such changes can be in the interest of the debt collection industry as a whole?

I was at the FENCA conference in Dubrovnik at the end of September. One of my French colleagues asked me: "So Pierre, it is true that in the UK you can no longer 'appeler un chat, un chat?'" (call a cat a cat – we don't have spades in France).

This new regime will have a deep and long-lasting impact on the debt collection industry, on the economy as a whole and a very perverse unintended impact on customer protection.

The final word: when you speak to an FCA representative, a bank or a debt purchase company, make sure they do not say the 'D' word. Many of them still do you know. Please remind them they are only allowed the 'C' word from now on, or else!



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