



CONSUMER AFFAIRS

B E R M U D A

Promoting Confident Consumers and Responsible Traders

Debt Collectors and Debt Management Handbook

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1. Legislative Framework

Under the Debt Collection Act 2018 (“DCA”) a “creditor” is defined as a person who is owed money from a debtor or a person that has extended credit to a debtor (i.e. a sale of consumer goods on credit, a loan, etc.) For clarity a “debtor” means a person who has an obligation for a debt and the payment for debt is past due.

The DCA applies to any person, “debt collection business” or “debt collection agencies” conducting debt collection practices against debtors; including individual creditors pursuing debts against a debtor. A “debt collection business” is defined as a commercial enterprise whose business objective is to pursue and collect debt on behalf of another person.

Debt collection agencies are not permitted to conduct commercial activities without a debt collection license. Failure to obtain a debt collection license, and/or operate in contravention of the DCA, may result in a financial penalty and imprisonment.

Consumer Affairs is responsible for the review and issuance of debt collection license applications. Consumer Affairs has an obligation to ensure that applicants for debt collection licenses are considered a “fit and proper” to conduct debt collection activities.

2. Debt Collectors and Creditors

If you fall behind on your monthly expenses you may start to build up debt which will require repayment. If you fail to repay your outstanding debts it is likely that the people or businesses that you owe money (i.e. creditors) will pursue legal proceedings against you for the debt that you owe them.

Alternatively, instead of pursuing legal proceedings against you themselves, your creditor may refer your debt to an authorized debt collection agency to represent them and alleviate the need for them to have to actively manage the debt collection process.

If your creditor refers your debt to a debt collection agency it is important to know that, in addition to the outstanding debt, you will also be subjected to debt collection fees and legal costs which will be added to your outstanding debt.

This section covers the legislative framework creditors and debt collection agencies must comply with when pursuing debts against debtors.

3. Register of Debt Collectors

In accordance with section 12 of the Debt Collection Act 2018 (“DCA”), Consumer Affairs maintains an active register of all licensed debt collection agencies.

License Number	Name of Debt Collector	Physical Address	License Active Date	License Expiration Date
DCL1001	JSM Limited	11 Par La Ville Road, Hamilton	1 April 2022	31 March 2024
DCL1002	Bermuda Credit Association Limited	Boyle Building, 3 rd Floor, 31 Queen Street, Hamilton	1 April 2022	31 March 2024

4. Unfair Debt Collection Practices

The Debt Collection Act 2018 (“DCA”) does not allow debt collection businesses to partake in “unfair debt collection practices”. An unfair debt collection practice includes the following:

- Conduct which harasses or oppresses a debtor;
- The use of false, deceptive or misleading representations to a debtor;
- The use of unfair or unscrupulous practices;
- Charging commission and fees in excess of the legislative authorized limit;
- Conducting debt collection activities for invalid debts;
- Applying payment to a disputed debt towards multiple debts; and/or
- Obtaining or providing debtor information from a credit reporting agency without authorization

It is important to note that individual creditors pursuing their own debts are not held to the same operating standards as a debt collection agency and are not eligible to be considered to be participating in “unfair debt collection practices”.

4.1 Harassment and Oppression

A debt collection agency is considered to be utilizing harassing or oppressive commercial practices if the debt collection agency:

- Uses, or threatens to use, violence to harm the debtor, the debtor’s property or the property of any other person connected to the debtor;

- Threatens to spread false information regarding the debtor's credit history;
- Uses obscene or profane language;
- Publishes a list of debtors who refuse to pay a debt or publicly shares such information;
- Advertises the sale of any debt to coerce a debtor to make a payment;
- Conducting abusive behavior through continuous telephone calls intended to annoy, abuse or harass;
- Failing to disclose their identity when making telephone calls; and/or
- Exceeds three unsolicited contacts on behalf of the same creditor within seven consecutive days.

4.2 Misleading Representations

A debt collection agency may not make false, deceptive or misleading representations during the course of conducting its debt collection activities. Under the Debt Collection Act 2018 ("DCA") a misleading representation includes:

- False representations that the debt collector is acting as an agent for Consumer Affairs, any Government Department or quango, or any attorney;
- False representations that non-payment of debt will result in the arrest or imprisonment of any debtor or the seizure or attachment of sale of any property or wages unless such action is lawful (i.e. the debt collector threatens imprisonment but has not yet obtained a Committal to Prison for non-payment);
- Threats of illegal action;
- False representations that a sale, referral or other transfer of any interest will result in the debtor being unable to claim or defend payment of their debt;
- False representations that the debtor committed a crime;
- Communicating, or threatening to communicate, false credit information;
- Using or distributing any written communication which falsely represents court documents or government documents;
- Using false representations to collect, or attempt to collect, any debt information concerning a debtor;
- Failing to disclose written communication with the debtor, or any oral conversations, where it was communicated that the debt collection agency is attempting to collect a debt and that any information obtained will be relied upon for such purposes;
- Failing to disclose that any communication made with a debtor is coming from a debt collection agency;
- Falsely representing or implying that documents are a legal process if they are in fact not;
- Using any name other than the true name of the debt collector; and/or
- Falsely representing or implying that an unlicensed debt collector operates under or is employed by a debt collector.

4.3 Unfair Debt Collection Practices

Under the Debt Collection Act 2018 (“DCA”) a debt collection agency is restricted from utilizing unfair debt collection practices to collect, or attempt to collect, any debt from a debtor. Unfair trade practices include:

- Collecting any amount (including interest, fees, or expenses connected to the debt) unless the amount is supported by a formal agreement or document entered into between the debtor and creditor which verifies the creation of debt;
- Accepting a cheque or other payment instrument postdated by more than five days;
 - **Exemption:** Unless the person making the payment is notified in writing of the debt collector’s intention to deposit the cheque no more than 10 days and no less than 3 days after receipt of the cheque.
- Accepting any postdated cheque or other postdated payment instrument to intentionally threaten criminal prosecution for non-payment;
- Depositing or threatening to deposit any post-dated cheque or other postdated payment instrument prior to the date on such cheque or instrument;
- Charging for communications and failing to communicate that charges may be applied as a result of such communication;
- Communicating with a debtor by postcard regarding a debt; and/or
- Using any language or symbol, other than the debt collector’s address, on any envelope when communicating by mail.

4.4 Fees and Charges

Under the Debt Collection Act 2018 (“DCA”) a debt collection agency is subject to restrictions which limit the amount of fees (i.e. commission fees and administrative fees) that may be applied to a debt in order to recover the costs associated with collecting debt on behalf of the creditor.

When a debtor wishes to enter into a debt repayment agreement with a debt collection agency, the DCA explicitly states that the debt collection agency may impose a **commission fee up to 20% of the original amount** of the debt referred.

If you receive a letter before action from a debt collection agency and communicate that you wish to enter into a repayment schedule, it is worthwhile to ask the debt collection agency to:

- Confirm the original amount of debt with the creditor;
- Confirm the commission fee; and
- Confirm the total amount to be repaid inclusive of the commission fee.

With regards to administration fees, debt collection agencies may impose an **administrative fee up to 2% of the original amount** of the debt referred. However, a debt collection agency may only apply administrative fees to allow for the recovery of costs associated with communicating with a debtor for a particular month.

If you have been charged administrative fees it is worthwhile to ask the debt collection agency as to why the administrative fee was applied and for an invoice outlining the communication costs incurred. If a debtor wishes to repay their debt in full through a **one-time lump sum payment**, a debt collection agency may apply a commission fee **up to 10% of the outstanding debt**.

4.5 Validation of Debts

When a creditor refers a debt to a debt collection agency, the debt collection agency has an obligation to **follow-up with the debtor** with a written notice containing the following information:

- The amount of the debt;
- The name of the creditor who is owed the debt;
- A statement outlining that unless the debtor disputes the debt **within 30 days of receipt** of the written notice, the debt will be assumed by the debt collector to be valid;
- A statement that if the **debtor notifies the debt collection agency in writing**, within 30 days of receiving the letter from debt collection agency, that the debt or any portion of the debt is **disputed**, the debt collector will obtain supporting documentation verifying the amount of the debt and that such documentation will be provided to the debtor; and
- A statement that, upon receipt of a written request from the debtor within 30 days of receiving the letter from debt collection agency, the debt collection agency will provide the name and address of the original creditor (if different from the current creditor).

Following the issuance of the written notice on the debtor, the debt collection agency is obliged to stop collecting the debt, or any disputed portion of the debt until the debt collection agency obtains:

- Evidence verifying the amount of the debt;
- Confirmation of the name and address of the original creditor; and
- A copy of the verifying documentation is mailed to the debtor.

It is important to note that failure to reply to the debt collection agency within the 30-day period does not amount to admittance of liability of the debt. If you receive a letter from a debt collection agency and fail to reply within 30 days, Consumer Affairs advises that you contact the debt collection agency immediately in order to try to avoid incurring additional legal and administrative costs.

4.6 Multiple Debts

If you owe multiple debts and make a single payment to any debt collection agency, the debt collection agency cannot apply the payment to any debts you may be disputing. The debt collection agency may only apply your payment in accordance with your instructions (i.e. apply your payment to the debt you explicitly state at the time of payment).

5. Making a Complaint

If you are having a problem with a debt collection agency and suspect that you have been subjected to “unfair debt collection practices”, Consumer Affairs advises that you contact the debt collection agency immediately. You should be able to get their contact details from their website or from the letter before action you have likely received from the debt collection agency.

In addition to contacting the debt collection and speaking to a customer service representative on the phone, Consumer Affairs advises that you send a follow-up email or letter repeating what was discussed. This way you will have a personal record of your conversation with the debt collection agency that may be relied upon in the future.

When sending the follow-up e-mail Consumer Affairs advises that you clearly outline the nature of your complaint to the debt collection agency (e.g. what is happening, or has happened, and what you want them to do about it). The debt collection agency might be able to sort out the problem immediately and schedule an appointment to discuss your concerns in person.

When writing your follow-up e-mail/letter you should note down the:

- Date and time you first contacted the debt collection agency; and
- First and last name of the customer service representative you communicated with; and
- The problem you are currently experiencing (i.e. excessive fees charged, misrepresentation, etc.)

When you write to the debt collection agency include your account number and any case reference numbers you have. This makes it quicker and easier to sort out your problem. For further guidance on how to communicate with your debt collection agency and submit complaint please see below.

5.1 Contact a Customer Service Representative

If you have any questions regarding a debt, or have experienced issues with a debt collection agency, Consumer Affairs suggests that you contact the debt collection agency and speak to a customer service representative. The consumer service representative can help you if you:

- Have tried to contact the debt collection agency and not gotten through;
- Contacted the debt collection agency but your problem hasn't been fixed;
- Have received a letter before action, an ordinary summons, a judgement summons, a warrant of arrest or a committal to prison;
- Have complex problems associated with your ability to repay your debts; and
- Are considered to be 'vulnerable'.

You could be classed as a vulnerable consumer if you:

- Have mental and/or physical health problems;
- Don't speak or read English well; and/or
- Have reached your pension retirement age (i.e. 70+ years old).

If you have tried to contact the debt collection agency and they will not answer the phone or reply to an e-mail you have sent them, Consumer Affairs advises that you submit a formal complaint to the debt collection agency.

5.2 Submitting a Complaint

When submitting a complaint to a debt collection agency you should gather all supporting documents and evidence you intend to rely on to support your complaint. Such supporting documentation may include:

- A copy of credit agreement or service contract with your creditor that referred the debt to the debt collection agency;
- Copies of evidence indicating historical payments to your creditor and/or the debt collection agency;
- Notes and correspondence supporting conversations held with customer service representatives; and
- Account number.

When you are ready to submit a complaint Consumer Affairs advises that you look online for the debt collection agency's "complaints procedure". The debt collection agency's complaints procedures should be listed on their website.

If you decide to complain over the phone you will need to explain the problem clearly to a customer service representative and tell them how you would like the problem to be resolved (e.g. giving you money back if you have been overcharged due to excessive fees or have your matter delisted in court, etc.).

Consumer Affairs advises that you make sure that you ask the customer service representative: (i) how long it will take for them to act in response to your complaint; (ii) the name of the customer representative; and (iii) for a customer call reference number. It is also a good idea to take note of the time and date you called and who you spoke with.

When complaining in writing you can either directly email your complaint to the debt collection agency or print a physical copy of your complaint and submit it physically to the debt collection agency through the Bermuda Post Office.

Consumer Affairs advises that you make sure you keep a copy of any emails you send to, or receive from, the debt collection agency. If you elect to mail a physical copy of your complaint it is important to remember to ask the Bermuda Post Office for proof of postage.

The debt collection agency should then get in touch with you and confirm whether they need any more details about your complaint. The debt collection agency should have your complaint resolved within 60 days of submitting your complaint and provide you with a 'decision letter' explaining their decision and how they will deal with your complaint.

If after filing a formal complaint with the debt collection agency you have still not received a formal response or phone call, it is advised that you file a formal complaint with the Consumer Affairs.

5.3 Consumer Affairs

As a consumer you can complain to Consumer Affairs if you have already submitted a complaint to a debt collection agency if:

- You are unhappy with their decision; or
- You have not been given a decision within 60 days

Consumer Affairs is responsible for regulating and overseeing the commercial activities of debt collection agencies and can:

- Get the debt collection agency to look at your complaint again;
- Decide that the debt collection agency made the right decision;
- Force the debt collection agency to give you a response to your complaint and resolve your issues
- Conduct an inspection of a debt collection agency's records;
- Impose cease and desist orders obliging debt collection agency's to refrain from utilizing unfair debt collection practices;
- Impose financial penalties on debt collection agencies operating in breach of their legislative obligations (i.e. to handle consumer complaints in a fair and effective manner); and
- Amend or revoke a debt collection agency's license as a result of operating in breach of their legislative obligations

6. Debt Management Plans

If you are struggling to keep up with debt payments on things like credit cards, personal overdrafts and loans, Consumer Affairs advises that you reconsider what are your priority and non-priority debts and develop a debt management plan (“DMP”).

6.1 Priority and Non-Priority Debts

Priority debts are monthly expenses where you will likely face significant consequences if you fail to pay them on time. When developing your debt management plan Consumer Affairs advises that you keep priority expenses separate from your non-priority expenses and emphasize payment of your priority expenses before entering a debt repayment plan for non-priority debts.

Examples of priority debts include, but are not limited to, the following:

- Mortgage or rent arrears;
- Gas and/or electricity arrears;
- Land tax arrears;
- Court fines; and
- Arrears of maintenance payable to an ex-partner or children (i.e. child support).

Non-priority debts are less urgent expenses which if left unpaid will result in less immediate consequences when compared to the consequences associated with non-payment of priority debts. Non-priority debts include, but are not limited to, expenses such as:

- Bank loans and personal loans;
- Credit cards; and
- Student loans.

It is at this stage that Consumer Affairs advises that non-payment of your bank loan, personal loans, credit cards and student loans held with financial service providers (i.e. banks) will likely negatively impact your personal credit history.

6.2 Agreeing to a Voluntary Debt Management Plan

A voluntary debt management plan is an informal agreement between you and your creditors, or between you and a debt collection agency (i.e. businesses that you owe money for consumer goods or services, landlord for rent arrears, etc.) specifically intended to schedule the repayment of your priority and non-priority debts.

A voluntary debt management plan is **not legally binding**. This means that you are not legally tied into the debt management plan for a minimum period and can cancel it at any time.

It is worth noting that failure to comply with a voluntary debt management plan may likely result in a creditor or debt collection agency pursuing legal proceedings in order to obtain a legally binding debt repayment plan (i.e. a court order).

A legally binding debt repayment plan will likely include a “default of payment” provision (i.e. imprisonment for a specified period of time if you fail to comply). Following continuous non-compliance with a legally binding repayment plan, your creditor may apply to the courts for a Warrant of Arrest and if necessary a Committal to Prison. Upon completing the mandatory imprisonment you will still remain liable for the debt outstanding.

If you have a debt in **joint names** with someone else, this can be included in your debt management plan. However, your creditors may still chase the other person for all of the debt. Whenever you take out a joint credit agreement (i.e. a loan or credit card), with another person, you are both liable for the full amount of the debt. This is known as **joint and several liability**. Further guidance on joint liability, please see the Debt & Finance – Mortgage Management page.

If both you and your partner are struggling with debts you might want to consider setting up a joint debt management plan where you would both be equally responsible for the repayment plan. It does not matter if you have different levels of income or debts. You can also include debts that are only under one name in a joint debt management plan.

6.3 Pros and Cons of Entering into a Voluntary Debt Management Plan

A voluntary debt management plan with a creditor or debt collection agency may be a good option for you to consider if the following applies to you:

- You can afford the monthly repayments on your priority debts (e.g. a mortgage, rent and council tax) but are struggling to keep up with your credit cards and loans; or
- You would like one set monthly payment which will help you to manage your monthly financial budget.

However, Consumer Affairs advises that you fully understand the impact of entering into a voluntary debt management plan as:

- It will take longer to pay back your debt as opposed to one lump sum payment;
- You will likely pay more over time as your creditor will likely charge interest; and
- Your creditors might refuse to co-operate and enter into a repayment plan or contact you in the event you default on repayment.

If you are unsure about whether entering into a debt management plan with your creditor or debt collection agency is right for you, you might want to think about other options for dealing with your debts.

6.4 Non-Compliance of a Voluntary Debt Management Plan

If a debtor fails to comply with an agreed voluntary debt management plan, and a creditor or debt collection agency decides to pursue legal proceedings in order to collect the monies owed, the debtor will receive a letter from the creditor or appointed debt collection agency (i.e. a “letter before action”).

The letter before action will likely include a provision that will state if the debtor fails to contact the creditor or debt collection agency within the prescribed period of time (e.g. 7 days) the creditor or debt collection agency will pursue legal proceedings for the outstanding debt, interest and legal costs, if applicable.

Consumer Affairs advises that if you receive a letter before action from a creditor or debt collection agency that you contact them as soon as possible and enter into negotiations in order to potentially avoid incurring interest, additional fees and avoid the administrative burden of having to attend court. In this instance, it is likely that the creditor or debt collection agency may not be willing to enter into another voluntary repayment plan and will likely require full payment of the debt outstanding in order to cancel the commencement of legal proceedings.

To avoid such a circumstance, Consumer Affairs advises that you comply with any voluntary debt management plan entered and communicate with your creditor or debt collection agency if your personal financial circumstances have changed (i.e. lost your job and unable to consistently pay the agreed amount).

Frequent and transparent communication may avoid your creditor or debt collection agency from pursuing legal proceedings as they may agree to temporarily amend the terms and conditions of your voluntary repayment plan.



How to contact Consumer Affairs

Mailing address:

D. Rego Building, 3rd Floor
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Hamilton HM 12

Telephone:

Consumer Affairs (441) 297-7627
Rental Unit (441) 297-7700

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