

The law relating to the unlawful harassment of debtors is dealt with by Section 40 of the Administration of Justice Act 1970.

WHAT IS HARASSMENT?

Harassment is defined as trying to coerce a person to pay a contract debt by making demands for payment that intend to cause that person or members of his family "alarm, distress or humiliation, because of their frequency or publicity or manner"

In addition any false representation that a type of non-payment is criminal or that the person is an official of the court or other publicly sanctioned debt collector is also considered harassment. Harassment can take place orally or in writing.

N.B. Anything done by a person, that is "reasonable" when trying to recover a debt, is not considered to be harassment.

WHAT KIND OF ACTIVITIES COULD COUNT AS HARASSMENT?

Creditors are warned by the Office of Fair Trading (OFT) under the Debt Collection Guidance that the following are considered unfair:-

Communicating in an unclear, inaccurate or misleading manner

- * Letters that look like court claims
- * Not making it clear who the company is or what their role is
- * Unhelpful legal language
- * Asking you to contact them on premium rate telephone numbers
- * Calling at anti-social hours even when asked not to
- * Not giving balance statements about the debt when asked

Misrepresenting their authority and/or the correct legal position

- * Claiming to work for the court or be a bailiff
- * Implying that action can be taken that is not legally possible or that court action has been taken when it hasn't
- * Using a business name or logo that implies they are a government body
- * Implying that not paying the debt is a criminal offence

Putting pressure on debtors or third parties is considered to be oppressive

- * Contacting you too frequently
- * Pressurising you to sell property or take out more debt
- * Pressurising you to pay in full or in large instalments you can't afford
- * Ignoring disputes about whether you owe the money
- * Using obviously marked vehicles
- * Calling on neighbours and explaining to the neighbour why the enquiries are being made
- * Similar calls to places of work
- * Posting lists of debtors publicly
- * Abusive or threatening behaviour or statements
- * All acts of violence

Deceitful and/or unfair dealings

- * Sending letters addressed to "the occupier" or discussing the debt with someone without knowing they are the debtor
- * Refusing to deal with an advisor acting on the debtors behalf
- * Not accepting reasonable offers
- * Not passing on payments made
- * Refusing to freeze action if the debt is disputed

Those visiting debtors must not act in an unclear or threatening manner

- * Collectors should explain the reason for the visit and give notice of the time and date they will call
- * They shouldn't visit those who they know to be ill or vulnerable, and should leave if they visit and find someone who is distressed or unwell
- * Collectors should leave when you ask them to, and not come in if you don't want them to
- * They shouldn't visit you at work or somewhere like a hospital

Making unfair charges

- * Claiming collection costs not allowed in the original credit agreement and implying you are legally liable for these
- * Not putting the specific amounts that can be added for collection costs in the original credit agreement
- * Adding unreasonable charges

WHAT CAN I DO IF I AM BEING HARASSED?

A letter should be sent to the creditor/debt collector explaining the facts and asking them to refrain from making these demands. Inform them that you are familiar with the terms of "Section 40 of the Administration of Justice Act" and that you are aware of the OFT Debt Collection Guidance. Tell them that you are considering making a complaint about their behaviour under the guidance.

Let them know how you would prefer to be contacted and ask that they confirm their agreement to this, ideally in writing.

Send a copy of your letter to the Trading Standards Department. If the creditor/debt collector is a member of a trade association with a Code of Practice you should also send a copy of your letter to the trade association. Whilst a Code of Practice is not legally enforceable the association may take some action against members for non-compliance.

You should have no further contact with the harassing creditor until the matter has been resolved. This may involve politely, but firmly, refusing him / her entry into your home and not answering the telephone. Keep a record of all events as these may be needed for evidence.

In cases of violence, extreme harassment, fraud or blackmail the police should also be notified.

Another alternative may be to pursue your own prosecution in the Magistrates' Court. However this is likely to be very costly so seek legal advice first.

If the harassment doesn't stop contact the Trading Standards Department or the CAB for further advice.

REMEMBER HARASSMENT IS A CRIMINAL OFFENCE

Your Name
Your Address

To: Creditors Name

and Address:

Date:

Re: Harassment

Dear Sir or Madam,

I wish to bring to your attention the following :- _____

I have sought advice about these recent events and have been told that they may constitute unlawful harassment under Section 40 of the Administration of Justice Act 1970. I am also aware of the Office of Fair Trading Debt Collection Guidance and I am considering making a complaint under this guidance.

Given this I would ask that you (your collector) refrain from acting in this unreasonable manner.

You can however, contact me by _____

Please can you let me know in writing if you are agreeable to contact in the manner specified above.

Thank you for your assistance and I hope to hear from you shortly.

Yours faithfully,

Your Signature