

The Debt Collecting Merry-Go-Round

Contents

Introduction

Chapter 1. What is the debt-collecting Merry-Go-Round? 9

Chapter 2. Debt collectors and their lack of powers 29

Chapter 3. What laws can assist the harassed debtor? 41

Chapter 4. Practical advice to deal with unfair debt
Collectors 53

Chapter 5. Taking legal action against a debt collector 77

Chapter 6. What will stop the Merry-Go-Round? 107

Appendix 1. Ferguson v British Gas Trading Ltd 2009
and Poncelet v N Power Ltd 2010

Index

Introduction

When I began doing debt recovery work in the late 1990's, I did not think I would be sitting down a decade later and writing a book about the practices of some debt collectors and large organisations. It is very easy to think without further consideration that I have crossed the divide from being an assertive debt collector, once known as Mr Nasty, to a lawyer who has gone soft and is helping people avoid paying what they owe. Such a view is not correct. I have always engaged in a no nonsense approach to debt collecting and associated litigation, but the key difference between my methods and that which I have experienced a lot more in recent times is that when I am presented with a genuine dispute or the individual is not going to pay, I suggest court action and not engage in further contact which is pointless. Undoubtedly, I would attempt direct communication with the debtor but once you have tried all the various telephone and written techniques to recover the money, then court action is an option unless you decide that the debt is not worth pursuing. There has been a shift from taking court action to continually haranguing a debtor until the coercion succeeds in obtaining payment.

I have no sympathy for a debtor who knows he or she owes the money being claimed and has the means to pay. Neither do I have sympathy for a debtor who wastes the court time in defending a claim on unreasonable grounds. However, where there is a genuine dispute I am against the tactic of using what can only be described as harassment to obtain payment. The form of pressure is like a Chinese water torture with that constant drip feed of contact. Once the creditor has sent its entire repertoire of threatening letters and nasty telephone calls, it usually passes the matter to a debt collection company to go through the same cycle. When that fails, often another debt collection company will start the whole process again.

This "debt-collecting merry-go-round" spins round and round until either a debtor succumbs to the pressure and pays or takes action to stop it. Those taking action to stop the harassment had often been small in number, perhaps thinking they could not take on the might of the big utility company or bank. This is changing and individuals are realising that they do not have to put up with the bullying. Thankfully, there are still individuals who are prepared to stand up against big business and achieve what is fair and just. Lord Jacob opened his Judgment in *Ferguson v. British Gas* by stating:

"It is one of the glories of this country that every now and then one of its citizens is prepared to take a stand against the big battalions of government or industry"

This book is not a guide to avoid paying your dues, but hopefully a clear and practical guide to those who are facing the mechanical debt collecting machine of some large organisations, the majority of whom seem to be utility companies and banks. I do not advocate this as being an avenue for people to make a fast buck at the expense of companies whose public profile has not been good in recent years. Instead, it is a guide to what is happening in the real world of debt collecting and what can be done by the ordinary person if caught up in the merry-go-round.

There is an analysis of the various pieces of legislation that has developed to protect the individual from unfair practice. As well as the Guidelines of the Office of Fair Trading, consideration is given to the Protection from Harassment Act 1997, which although originally designed to repel stalkers is now being used to restrain unreasonable intrusion from debt collectors. The important case of *Ferguson v British Gas* is examined and the full text of the Judgment of Lord Jacob is set out in Appendix 1.

There is practical guidance on what can be done to stop harassment or unfair practice. It is hoped that action taken at an early stage will be sufficient to end the unwanted or unnecessary actions of the debt collectors. It is only as a last resort that court action should be contemplated. I do not want to be seen as encouraging people to have a “pop” at banks or utility companies where it is not justified in order to seek compensation. When it is possible to resolve the matter in other ways they should be pursued first.

The book also includes some discussion of the powers of bailiffs but it intentionally does not consider in great detail the actions of a bailiff; there are some individuals who hold the view that every action taken by a bailiff is illegal and unreasonable. Of course there are some bailiffs who do not behave in the way they should; the so called “bad apples” as there are in every walk of life. Some prefer to not pay a small debt or fine so that they can engage in “legal” combat with the bailiff. I often think that in many of these situations, the debtor has had plenty of opportunities to challenge the fine or debt well before the bailiff comes knocking. Also, if an individual is in financial difficulty, there would normally have been the chance to seek debt advice well before the bailiff arrives.

Although the majority of the book looks at unfair practice and harassment, consideration is given to what have driven some organisations to resort to such practices. There is a fair amount of sympathy for creditors in the current climate. It is becoming increasingly difficult to collect debts as the court system is struggling to function effectively through under funding and the court customer is paying considerably more in court fees for what is an ineffective method of collecting debts. Little wonder that some have given up on the court system. The ways to reduce the harassment of debtors are explored and the answer seems to be that the courts need to provide an efficient and effective means of recovering money.

Much of the book relies on case studies. I believe that this is an effective way to express legal issues rather than simply set out the relevant law. The reader might be able to identify with the types of scenarios used in these examples. Although they are based on real cases, I should emphasize that none of the case examples are intended to refer to or comment upon any real case that may have happened.

Anthony Reeves
April 2011