RECEIVING A TEXT CLAIM OF DEBT

If you receive a random text from an alleged debt collector making a claim that they have the authority to come to your home, enter it and then take all your stuff, then a written response would be in order.

Many texts like this look like scams and in fact almost all are; however, if you wish to serve notice on the alleged company named within the text, for obvious legal reasons, then a written response should include an intention to sue if anyone should turn up.

Certain debt types are regulated by the FCA and therefore require the correct licencing and certification to collect on said debt.

Therefore issue a standard debt validation request that asks the correct series of question to verify if they have the authority to collect.

Also serve notice that they must provide documented evidence that they have the right to claim the debt and prove that the debt even exists.

Enquire on how they got your phone number, as you did not authorise this, and serve notice that the number they have is ***not*** to be used. AYou maybe the bill payer, this does ***not*** mean you are the main user of the phone.

Although it can be prudent to quote some legal knowledge to show that you are aware of how the legal system operates, it is not advisable to fill your response with endless acts, statutes and codes as this can be detrimental to your case, such as:

- You do not know the precise remedy and are attempting a ***"scatter gun"*** effect in the hope that something may work.
- You have tipped your hand too early by letting them know the direction you intend to take your remedy.
- You may quote codes that are not relevant to the situation, which shows lack of experience.
- You should only quote legal codes that you are familiar with, as you may be tested on why you quoted them.

In most cases it is best to mention just enough legal knowledge to show you know that for someone to come to your home they need a judicial instrument signed by a judge authorising the visit; therefore, you should request this and proof of a hearing and case number.

Note: obviously there ***cannot*** be a judicial instrument if there was ***no*** hearing creating a case number to begin with.

Also, give notice that if they do turn up and it is found that they have ***no legal right*** to do so, they will have committed trespass, whereby you shall sue for damages, usually £5,000.

If you respond to the text or click on any link that is sent via the text then this will be seen as acceptance of receiving the text and agreeing to further texts.

In short, you have entered into joinder and weakened your position significantly.

The following is a general template to be used as a guide with any response; edit to suit your particular remedy and situation.

Note: a notice should be physically written and sent via Royal Mail.

NOTICE TEMPLATE

NOTICE OF DISPUTE, DEBT VALIDATION AND DEMAND FOR EVIDENCE OF AUTHORITY

With reference to the unsolicited text communication received from your organisation alleging that a debt is outstanding and, further, asserting or implying that persons acting on your behalf have authority to attend at my private residence, enter the premises and take control of my property and belongings.

We hereby serve notice requesting you to validate your claim which constitutes a formal dispute requiring you to substantiate the matters asserted.

Existence and legal basis of the alleged debt

You are required to provide documentary evidence sufficient to establish the following:

1. ***The identity and full legal name of the alleged original creditor.***
2. ***The legal basis upon which the alleged debt is said to arise.***
3. ***A copy of the agreement, contract, instrument or other document relied upon.***
4. ***The date upon which the alleged liability arose.***
5. ***The date upon which any alleged default occurred.***
6. ***A complete statement of account showing the amount originally alleged to have been due, all payments and credits, interest, fees and other charges.***
7. ***The contractual basis for the sum presently claimed.***
8. ***Evidence establishing the name of the person legally liable for the alleged debt.***

If you contend that the alleged debt has been assigned to you or another entity, provide documentary evidence of the alleged assignment and identify the present legal owner of the alleged debt.

If you are acting merely as an agent, provide documentary evidence identifying the creditor or legal owner on whose behalf you act and evidence of your authority to act.

Regulatory authority

You are instructed to identify the precise legal and regulatory basis upon which you are conducting debt collection activity in relation to your alleged claim, such as:

1. ***Your full legal entity name, and address.***
2. ***FCA Firm Reference Number.***
3. ***The relevant FCA permission(s) upon which you rely.***
4. ***The identity of the entity legally responsible for the alleged debt.***
5. ***The legal basis upon which you assert authority to pursue the alleged debt.***

Where applicable, we wish to draw your attention to FCA CONC 7.14.1R, which requires a firm to suspend recovery steps where a customer disputes a debt on valid grounds or potentially valid grounds.

CONC 7.14.2G expressly identifies as valid grounds that the person pursued is not the true borrower or hirer, that the debt does not exist, or that the amount claimed is incorrect.

CONC 7.14.3R requires the firm to investigate such a dispute and provide details of the debt in a timely manner, while CONC 7.14.4R places upon the firm the responsibility of establishing the customer's identity and/or the amount owed where these matters are disputed.

We also draw your attention to CONC 7.5.3R concerning the provision of clear justification and/or evidence where a customer disputes a debt.

It further states that a firm must not ignore or disregard a customer's claim that a debt is disputed and must not continue to make demands for payment without providing clear justification and/or evidence of said claim.

<u>Alleged authority to attend, enter and take goods</u>

Your communication appears to assert an ability to attend our private residence, enter the premises and take our property.

You are therefore required to identify and provide documented evidence of precisely what legal power you assert, which would include the following but not limited to:

1. ***The statutory provision upon which you rely.***
2. ***Whether you claim to be a debt collector, enforcement agent, certificated enforcement agent or other legally authorised person.***
3. ***The full legal name of every enforcement entity involved.***
4. ***The name and status of any individual who may attend.***
5. ***The enforcement agent's certificate details.***
6. ***The judgment, order, warrant, writ or other enforcement instrument relied upon.***
7. ***Details of the court that issued it.***
8. ***The case or claim number.***
9. ***The date upon which judgment or the relevant order was made.***
10. ***The date upon which enforcement was authorised.***
11. ***The amount presently authorised for enforcement.***
12. ***The statutory provision conferring any claimed power of entry.***

For the avoidance of doubt, we do not consent to any person acting merely as a debt collector entering our private property, nor do we accept assumption or assertion that the correct legal instrument exists.

We also draw your attention in particular to Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 and to CPR Part 83 concerning writs and warrants.

If you contend that a writ or warrant is presently being enforced, this notice constitutes a formal request for reasonable information concerning its execution pursuant to CPR 83.8.

The reasonable information we request would be a copy of any and all writs, warrants or other judicial instruments you claim to have in your possession, as nothing else shall be accepted.

<u>Notice of Enforcement</u>

If you contend that you are exercising statutory enforcement powers under Schedule 12 of the Tribunals, Courts and Enforcement Act 2007, provide a complete copy of the Notice of Enforcement upon which you rely and evidence of the date and method by which it was served.

We require you to identify the statutory provision and procedure under which you contend that enforcement may lawfully proceed.

<u>Telephone number and personal data</u>

The telephone number to which your communication was sent was not provided to you by us for the purpose of debt collection, or for any other reason, as it is a private number not used for official or business purposes.

Therefore, it would appear that you gained this number without our authorisation and hence you are now legally required to answer the following questions:

1. ***The source from which you obtained the telephone number.***
2. ***The date upon which you obtained it.***
3. ***The identity of the organisation or person from whom you obtained it.***
4. ***The lawful basis relied upon for processing it.***
5. ***The purposes for which it is being processed.***
6. ***The categories of personal data held concerning the bill payer of the phone.***
7. ***The persons or organisations to whom the information has been disclosed.***
8. ***The basis upon which you have associated this telephone number with us personally.***

We further notify you that although the name associated with this number is the person responsible for payment of the telecommunications account, this does not establish that they are the principal, sole or actual user of the telephone number.

Accordingly, you are not to treat possession of the number as evidence establishing any identity as the alleged debtor or as evidence establishing liability for any alleged debt.

It is required you cease using this telephone number for debt collection communications as all further communication via text shall be deleted, causing an administrative charge in accordance to our fee schedule.

<u>Dispute and suspension of recovery activity</u>

As the alleged debt is formally disputed, accordingly to FCA CONC, we require you to comply with CONC 7.14 and suspend recovery activity while the matters raised in this notice are investigated and substantiated.

In particular, no person acting on your behalf is authorised by us to attend our property for the purpose of debt collection while the alleged debt remains reasonably queried and disputed.

<u>Notice concerning entry onto the premises</u>

No consent is given by us for an ordinary debt collector or other person without appropriate legal authority issued by a court of law to enter our private property.

You are instructed to produce the documented authority upon which you claim to possess a legal power of entry and enforcement before any such visit, which must be received by us by no less than 30 days before any suggested visit.

Furthermore, any person attempting to attend the premises must be able to, upon request, identify themselves fully and carry a duplicate copy of all the necessary documentation that has been stipulated within this notice.

Any purported entry without lawful authority, or any continued presence after a lawful request to leave, will be documented and may be relied upon in any subsequent litigation proceedings made against you for damages and trespassing.

We expressly reserve all rights and remedies available to us in respect of trespass, unlawful interference with goods, harassment, breach of statutory duty, data protection breaches and/or any other actionable conduct established by the evidence.

Nothing in this notice constitutes an admission of the alleged debt, an admission of liability, an acknowledgement of any alleged contractual relationship, an admission of the amount claimed, or consent to enforcement.

We require the matters raised above to be answered substantively and supported by documentary evidence.

A response which merely repeats the allegation that a debt exists, without providing the evidence and legal authority requested, will not constitute adequate substantiation of the claim.

By: Trustee

CONC: CONC is an acronym used by the ***Financial Conduct Authority*** (FCA). It simply takes the first four letters of the word ***CON***sumer ***C***redit (***CONC***).

Suffix R: Stands for ***Rule***. In the FCA Handbook, an ***"R"*** means the text is a mandatory legal requirement that firms must obey.

Suffix G: Stands for ***Guidance***, which provides helpful recommendations or examples rather than binding rules.

Links:

Financial Conduct Authority Handbook

Link: https://handbook.fca.org.uk/handbook

CONC 7.14: https://handbook.fca.org.uk/handbook/conc7/conc7s14

CONC 7.5.3R: https://handbook.fca.org.uk/handbook/conc7/conc7s5

Schedule 12 of the Tribunals, Courts and Enforcement Act 2007: https://www.legislation.gov.uk/ukpga/2007/15/schedule/12

CPR Part 83 concerning writs and warrants: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part-83-writs-and-warrants-general-provisions