

Chapter 3

Financial promotions and communications with customers



3.9 Financial promotions and communications: debt counsellors and debt adjusters

Application

3.9.1 **R** This section applies to a *financial promotion* or a communication with a *customer* in relation to *debt counselling* and to *debt adjusting*.

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3.9.2 **G**

- (1) The clear, fair and not misleading *rule* in **CONC 3.3.1 R** applies to a communication with a *customer* or the *communication* or *approval* for *communication* of a *financial promotion* in relation to *debt counselling* or *debt adjusting* and in relation to a communication with a *customer* in relation to *providing credit information services*.
- (2) In the light of the complexity of *debt counselling*, it is unlikely that media which provide restricted space for messages would be a suitable means of making *financial promotions* about *debt solutions*.

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3.9.3 **R** A *firm* must ensure that a *financial promotion* or a communication with a *customer* (to the extent a previous communication to the same *customer* has not included the following information) includes:

- (1) a statement of the services the *firm* offers;
- (2) a statement of any relationship with a business associate which is relevant to the services offered in the promotion;

[Note: paragraph 2.5a of *DMG*]

- (3) a statement setting out the level of fees charged for the *firm's* services, how they are calculated, what service they cover and where it is not possible to state an exact amount, a reasonable estimate of the anticipated fees, or the average level of its fees, for the service in question;

[Note: paragraphs 2.5c and 3.18f of *DMG*]

- (4) a statement of whether any aspect of the services is provided by a third party or at extra cost;

[Note: paragraphs 2.5a and 3.18f of *DMG*]

- (5) a statement that a *customer* may be eligible under the *Financial Ombudsman Service* and referring by a link or otherwise to the information the *firm* is required to publish under ■ DISP 1.2.1R (1);

[Note: paragraph 2.5b of *DMG*]

- (6) where this is the case, a statement that the *firm's* service is profit-seeking;

[Note: paragraphs 2.5c and 3.18a of *DMG*]

- (7) where this is the case, a statement that the *firm's* service is offered in return for payment from the *customer*;

[Note: paragraphs 2.5c and 3.18a of *DMG*]

- (8) other than for a *not-for-profit debt advice body*, a reference to impartial information and to sources of assistance from *not-for-profit debt advice bodies*;

[Note: paragraph 2.5d of *DMG*]

- (9) where the *financial promotion* or communication sets out detail of how a *customer* might resolve debt problems by explaining options, the most important actual or potential advantages, disadvantages and risk of each option, including those of the *debt solution* offered by the *firm*;

[Note: paragraphs 2.5d and 3.18h of *DMG*]

- (10) a statement setting out the likely adverse effect of entering into the *debt solution* in question on the *customer's* credit rating;

[Note: paragraph 3.18g of *DMG*]

- (11) a statement setting out that evidence of entering into an individual voluntary arrangement, a debt relief order or a protected trust deed will be entered on a public register;

[Note: paragraph 3.18g of *DMG*]

- (12) where applicable, a statement setting out that a *debt solution* is only available in a particular country of the *UK*;

[Note: paragraph 3.18i of *DMG*]

- (13) where entry into a *debt solution* with the *firm* will lead to a period when payments to a *customer's* lenders or owners (in whole or in part) are not made or are retained by the *firm*, a warning of the likelihood of falling into arrears or increasing arrears and an explanation of when distributions would be made to *lenders* or *owners*;

[Note: paragraph 3.18n of *DMG*]

- (14) a statement of the risks of entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including of the following risks:

- (a) if the arrangement or deed fails, the risk of bankruptcy;
- (b) homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;
- (c) there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
- (d) the *customer's lenders or owners* may not approve the individual voluntary arrangement or the protected trust deed; and
- (e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding; and

[Note: paragraph 3.18o of *DMG*]

- (15) a statement that where another option for dealing with a *customer's* debts is available, that another option is available and may be suitable for the *customer*.

[Note: paragraph 3.18r of *DMG*]

- (16) an explanation that compensation might be available from the *compensation scheme* if there is a *shortfall* in *client money* held by the *firm* for that *customer*.

3.9.4 G In **CONC 3.9.3R (8)** making reference to impartial sources of information should include making *customers* aware of publications concerning dealing with creditors published by the Insolvency Service (England and Wales), the Department of Enterprise, Trade and Investment (Northern Ireland) or debt advice published by the Scottish Government.

3.9.4A G *Firms* are reminded of:

- (1) the *guidance* in **CONC 3.3.10G(6) to (8)** in relation to *debt solutions*; and
- (2) the *rule* in **CONC 8.2.4R** which requires *firms* to notify the *customer* that *free debt counselling, debt adjusting and providing of credit information services* is available and that the *customer* can find out more by contacting *MoneyHelper*.

3.9.5 R A *financial promotion* or a communication with a *customer* by a *firm* must not:

- (1) falsely claim or imply that the help and debt advice is provided on a free, impartial or independent basis, where the *firm* has a profit-seeking motive;

[Note: paragraph 3.18b of *DMG*]

- (2) falsely claim or imply in any way that the *firm* is, or represents, a charitable or *not-for-profit body* or government or local government organisation;

[Note: paragraph 3.18c of *DMG*]

- (3) promote a claims management service (within the meaning of section 419A of the *Act*) as a way of managing a *customer's* debts;

[Note: paragraph 3.18k of *DMG*]

- (4) claim or imply that the *firm* can guarantee a favourable outcome in negotiations with a *lender* or *owner* concerning the *customer's* debts;

[Note: paragraph 3.18m of *DMG*]

- (5) unfairly request, suggest or direct a *customer* to call the *firm* using a premium rate telephone number.

[Note: paragraph 3.18w of *DMG*]

3.9.6 **G** An example of unfairly directing a *customer* to a premium rate telephone number may be to direct a *person* wishing to complain to such a number.

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3.9.6A **G** *Firms* should note the effect of the *call charges rule* in ■ GEN 7.

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3.9.7 **R** A *firm* must not:

- (1) unless it is a *not-for-profit debt advice body* or a *person* who will provide such services, operate a look alike website designed to attract *customers* seeking free, charitable, not-for-profit or governmental or local governmental debt advice; or

[Note: paragraph 3.20a of *DMG*]

- (2) seek to use internet search tools or search engines so as to mislead a *customer* into visiting its website when the *customer* is seeking free, charitable, not-for-profit or governmental or local governmental debt advice.

[Note: paragraph 3.20b of *DMG*]