

Chapter 7

Arrears, default and recovery (including repossessions)

7.12 Lenders' responsibilities in relation to debt

Application

- 7.12.1 **R** This section applies to a *firm* with respect to *consumer credit lending* or in respect to activity that would be *consumer credit lending* but for article 60C(4A) of the *Regulated Activities Order*.

Unfair business practices

- 7.12.2 **R** A *firm* must not:
- (1) refuse to deal with a *not-for-profit debt advice body*, *debt counsellor*, *debt adjuster* or with another *person* acting on behalf of a *customer*, unless there is an objectively justifiable reason for doing so;

[Note: paragraphs 3.9c of DCG and 3.48 of DMG]
 - (2) unless the *credit agreement* requires payments to be made to a third party, refuse to accept a payment tendered to the *firm* by the *customer* or by a *person* acting on behalf of the *customer*;

[Note: paragraphs 3.8 of DCG and 3.49a of DMG]
 - (3) refuse to deal with a *customer* who is developing a repayment plan, a third party who is assisting a *customer* to develop a repayment plan or a third party who is developing a *debt management plan* for the *customer's* debts, unless there is an objectively justifiable reason for doing so;

[Note: paragraphs 3.9c of DCG and 3.49b of DMG]
 - (4) where a *person* is acting on behalf of a *customer*, directly contact the *customer* without the *customer's* consent, unless there is an objectively justifiable reason for doing so;

[Note: paragraph 3.9d of DCG]
 - (5) operate a policy:
 - (a) of only negotiating the freezing of interest and charges on a *customer's* debts where the *lender* has an existing arrangement with a *person* acting on behalf of the *customer*; or
[Note: paragraph 3.49e of DMG]

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(b) of refusing to negotiate with certain third parties or with a *customer* developing their own repayment plan; or

[Note: paragraph 3.49c (box) of *DMG*]

(6) return or refuse a *repayment* or refuse to credit a *repayment* to a *customer's* account merely because the *repayment* is tendered by a *debt management firm*.

[Note: paragraph 3.49a of *DCG*]

(1) ■ CONC 1.2.2 R requires a *firm* to ensure its employees and agents comply with *CONC* and that it takes reasonable steps to ensure other *persons* who act on its behalf do so. This *rule* would apply where a *debt collector* acts as agent or on behalf of a *lender*.

(2) Situations where it may be justified for a *firm* to refuse to deal with a *person* acting on behalf of a *customer* may include, for example, refusing to deal with that *person* where the *firm* is able to show that the *person* has failed to comply with consumer protection legislation or with *FCA rules*.

[Note: paragraph 3.48 of *DMG*]

(3) It may be justified for a *firm* to contact a *customer* directly where:

(a) repeated unsuccessful efforts have been made to contact a *person* acting on behalf of the *customer*; or

[Note: paragraphs 3.9d of *DCG* and 3.49c (box) of *DMG*]

(b) the *firm* reasonably believes the *person* acting on behalf of the *customer* is acting against the best interests of the *customer*.

(4) Situations where it would be justified for a *firm* to contact a *customer* directly include, for example:

(a) sending a statutory notice, taking the reasonable steps required by ■ CONC 7.9.7 R; or

(b) where the sole purpose of the contact is to signpost the *customer* to *not-for-profit debt advice bodies*.

(5) Where a *firm* is in dispute with a *person* acting on behalf of the *customer* it should make its position known to that *person* and to the *customer* as soon as practicable.

[Note: paragraph 3.49d of *DMG*]

(6) The *FCA* does not believe it is justified to bypass contacting a *person* acting on behalf of a *customer* merely because that *person* has not agreed to comply with the Insolvency Service's Debt Management Protocol.