Chapter 8

Debt advice
8.1 Application

8.1.1 This chapter applies, unless otherwise stated in or in relation to a rule to every firm with respect to:

(1) debt counselling;

(2) debt adjusting; and

(3) to the extent of giving the advice referred to in article 89A(2) of the Regulated Activities Order, providing credit information services.

8.1.2 CONC 8.10 (Conduct of business: providing credit information services) sets out that that section applies to every firm with respect to providing credit information services and with respect to operating an electronic system in relation to lending in relation to activities specified in article 36H(3)(e) to (h) of the Regulated Activities Order which are similar to providing credit information services.

8.1.3 CONC 8 covers all firms with respect to debt counselling, debt adjusting and providing credit information services, which includes profit-seeking as well as not-for-profit bodies which hold such permissions and in that case include those bodies with permission by virtue of article 62 of the Regulated Activities Order.

[Note: paragraph 1.10 of DMG]

8.1.3A CONC 8.3.1R(14) does not apply to a firm with respect to providing credit information services.

8.1.4 The activities of debt counselling and debt adjusting apply to credit agreements and consumer hire agreements whether they are regulated or not.
8.2 Conduct standards: debt advice

Overarching principles

8.2.1 The Principles for Businesses (PRIN) apply as a whole to firms with respect to debt counselling, debt adjusting and providing credit information services.

8.2.2 (1) One aspect of conducting a firm's business with due skill, care and diligence under Principle 2 is that a firm should ensure that it gives appropriate advice to customers residing in the different countries of the UK. Failure to pay proper regard to the differences in options for debt solutions available to those customers and to the differences in enforcement actions and procedures is likely to contravene Principle 2 and may contravene other Principles.

[Note: paragraph 3.23d of DMG]

(2) Recommending a debt solution which a firm knows, believes or ought to suspect is unaffordable for the customer is likely to contravene Principle 2, Principle 6 and Principle 9 and may contravene other Principles. The firm should also take into account the expected term of the proposed debt solution, having regard to the Principles.

[Note: paragraph 3.26j of DMG]

(3) An example of behaviour that is likely to contravene Principle 6 and may contravene other Principles in this field is for a firm to actively discourage a customer from considering alternative sources of debt counselling.

[Note: paragraph 3.23m of DMG]

8.2.3 A firm covered by CONC 8 has obligations under the FCA's Dispute Resolution: Complaints sourcebook (DISP) to treat complainants fairly; these are set out in DISP 1.

Signposting to sources of free debt counselling, etc

8.2.4 A debt management firm must prominently include:

(1) in its first written or oral communication with the customer a statement that free debt counselling, debt adjusting and providing of credit information services is available to customers and that the customer can find out more by contacting the Money Advice Service; and
(2) on its web-site the following link to the Money Advice Service web-site (https://www.moneyadviseservice.org.uk/en/tools/debt-advice-locator).

[Note: paragraph 1.7 of Debt Management Protocol]

Dealing with lenders of customers

8.2.5 R A firm’s communications to lenders (or to lenders’ representatives) on behalf of its customers must be transparent so as to ensure a firm’s customer’s interests are not adversely affected.

[Note: paragraph 2.5 of DMG]

8.2.6 R Where entry into a debt solution will lead to a period when payments to lenders (in part or in whole) are not made or are retained by the firm, the firm must, as soon as possible after the customer enters into the debt solution, notify the customer’s lenders of the reason payments are not to be made to the lender and the period during which that will be the case.

[Note: paragraph 3.18niv of DMG]

Vulnerable customers

8.2.7 R A firm must establish and implement clear and effective policies and procedures to identify particularly vulnerable customers and to deal with such customers appropriately.

[Note: paragraph 2.4 of DMG]

8.2.8 G Most customers seeking advice on their debts under credit agreements or consumer hire agreements may be regarded as vulnerable to some degree by virtue of their financial circumstances. Of these customers some may be particularly vulnerable because they are less able to deal with lenders or debt collectors pursuing them for debts owed. Customers with mental health and mental capacity issues may fall into this category.

[Note: paragraph 2.4 of DMG]
8.3 Pre contract information and advice requirements

8.3.1 A firm must (except where the contract is a credit agreement to which the disclosure regulations apply) provide sufficient information, in a durable medium, when the customer first enquires about the firm’s services, about the following matters to enable the customer to make a reasonable decision:

1. the nature of the firm’s service offered in the contract to the customer;
   [Note: paragraph 3.38b of DMG]

2. the duration of the contract;
   [Note: paragraph 3.38c of DMG]

3. the total cost of the firm’s service or, where it is not possible to state the total cost, the formula the firm uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;
   [Note: paragraph 3.40c of DMG]

4. any fee or deposit, such as an arrangement fee, a periodic fee, a management fee, or an administrative fee;
   [Note: paragraph 3.38c of DMG]

5. any fee or charge which can be imposed on the customer in relation to cancellation of the contract;
   [Note: paragraph 3.38c of DMG]

6. any other costs likely to be incurred under the contract and the circumstances in which these would be payable;
   [Note: paragraph 3.38c of DMG]

7. where the firm bases its fees or charges on some percentage or an hourly rate or some other formula, an explanation of how the fees or charges are calculated;
   [Note: paragraph 3.9c of DMG]

8. the elements of the service that the fees cover;
The circumstances in which a customer may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the customer may be required to pay in that case;

[Note: paragraph 3.40d of DMG]

The consequences on the customer's credit rating, including how long the matter will show on the customer's credit file and that the customer may not be able to obtain credit or other financial services in the future;

[Note: paragraph 3.38e of DMG]

Whether a right to cancel applies and, if so, the period and any conditions for exercising the right to cancel the contract and any amount the customer may be required to pay;

[Note: paragraph 3.38h of DMG]

How payments will be allocated to lenders and when payments will be made; and

[Note: paragraph 3.38k of DMG]

The period of time between payments being received from the customer and payments being made to lenders, including the date when the first payment will be made to lenders.

[Note: paragraph 3.38l of DMG]

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.

[Note: paragraphs 3.33, 3.35 and 3.38 of DMG]

A firm must ensure that:

1. All advice given and action taken by the firm or its agent or its appointed representative:
   a. Has regard to the best interests of the customer;
   b. Is appropriate to the individual circumstances of the customer;
   c. Is based on a sufficiently full assessment of the financial circumstances of the customer;

   [Note: paragraph 2.6a of DMG]

2. Customers receive sufficient information about the available options identified as suitable for the customers' needs; and

   [Note: paragraph 2.6b of DMG]

3. It explains the reasons why the firm considers the available options suitable and other options unsuitable.

   [Note: paragraph 2.6b of DMG]
Firms are reminded of PERG 12.6G which contains guidance on the regulated activity of advising on conversion or transfer of pension benefits.

The individual circumstances of the customer include, for example, the customer’s financial position, the country in the UK to whose laws and procedures the customer and the lender in question are subject, and the level of understanding of the customer.

[Note: paragraph 2.6c of DMG]

A firm must ensure that advice provided to a customer, whether before the firm has entered into contract with the customer or after, is provided in a durable medium and:

(1) makes clear which debts will be included in any debt solution and which debts will be excluded from any debt solution;

[Note: paragraph 3.38j of DMG]

(2) makes clear the actual or potential advantages, disadvantages, costs and risks of each option available to the customer, with any conditions that apply for entry into each option and which debts may be covered by each option;

[Note: paragraphs 3.23a and 3.38b of DMG]

(3) warns the customer:

(a) of the actual or potential consequences of failing to continue to pay taxes, fines, child support payments and debts which could result in loss of access to essential goods or services or repossession of, or eviction from, the customer’s home;

[Note: paragraph 3.38m of DMG]

(b) of the actual or potential consequences of not continuing to make repayments under credit agreements or consumer hire agreements;

[Note: paragraph 3.26k of DMG]

(c) of the actual or potential consequences of ignoring correspondence or other contact from lenders and those acting on behalf of lenders;

[Note: paragraph 3.38n of DMG]

(d) that action to recover debts may be commenced, which may involve further cost to the customer; and

[Note: paragraph 3.38q of DMG]

(e) that by entering into a debt management plan or another non-statutory repayment plan there is no guarantee that any current recovery or legal action will be suspended or withdrawn;

[Note: paragraph 3.38r of DMG]
(4) where relevant to the debt solution, makes clear the risks, including 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 that 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 protected trust deed;

(d) the customer’s lenders may not approve the individual voluntary arrangement or 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;

[Note: paragraph 3.38s of DMG]

(5) takes proper account of the individual needs of, and any requests made by, a customer; and

[Note: paragraph 3.23f of DMG]

(6) where relevant, explains the nature of an insolvency procedure and the role of the firm.

[Note: paragraphs 3.23 and 3.38 of DMG]

8.3.4A R

(1) If a firm has not entered into a contract with a customer, and is satisfied on reasonable grounds that it is unlikely to do so, ■ CONC 8.3.4R applies in relation to that customer as if the words “is provided in a durable medium and” were omitted.

(2) The firm must keep a record of the grounds in (1).

8.3.5 G

The information required by ■ CONC 8.3.4 R should be provided leaving sufficient time for the customer (taking into account the complexity of the information and the customer’s financial position) to consider it before having to make a decision on the appropriate course of action.

8.3.6 G

A firm should not unfairly incentivise debt advisers (whether employees, agents or appointed representatives of the firm) to the extent that an incentive might lead the firm not to comply with ■ CONC 8.3.2 R.

[Note: paragraph 3.22 (box) of DMG]

8.3.6A G

(1) Firms must provide advice in a durable medium, unless ■ CONC 8.3.4AR applies. Where questions over the application of that exemption may arise, for example, in relation to advice given to a customer at an
initial meeting or telephone call, the following considerations may be relevant:

(a) if a firm never charges for advice and never enters into contracts with customers for debt solutions, CONC 8.3.4AR may remove the requirement to provide advice to the customer in a durable medium; and

(b) if a firm enters into contracts with customers (in relation to advice, to a debt solution, or to some other matter), it will need to consider, at the early stages of contact with a customer, whether a contract with that customer may follow. A firm is only likely to able to satisfy itself on that point once discussions with a customer have advanced to a stage where it is reasonable to conclude that it is more likely than not that the firm will not enter into a contract with the customer. The firm should keep a record of its reasons for being satisfied on the point.

(2) Where the exemption in CONC 8.3.4AR applies, the firm should consider whether it may nevertheless be appropriate to comply with CONC 8.3.4R in certain cases, for example where complex advice is given.

8.3.7 A firm must:

(1) provide the customer with a source of impartial information on the range of debt solutions available to the customer in the relevant country of the UK;

[Note: paragraph 3.23b of DMG]

(2) before giving any advice or any recommendation on a particular course of action in relation to the customer’s debts, carry out a reasonable and reliable assessment of:

(a) the customer’s financial position (including the customer’s income, capital and expenditure);

(b) the customer’s personal circumstances (including the reasons for the financial difficulty, whether it is temporary or longer term and whether the customer has entered into a debt solution previously and, if it failed, the reason for its failure); and

(c) any other relevant factors (including any known or reasonably foreseeable changes in the customer’s circumstances such as a change in employment status);

[Note: paragraph 3.23c of DMG]

(3) refer a customer to an appropriate not-for-profit debt advice body in circumstances where the customer:

(a) has problems related to debt requiring immediate attention with which the firm is unable or unwilling to assist the customer; or

[Note: paragraph 3.23gi of DMG]

(b) does not have enough disposable income to pay the firm’s fees;

[Note: paragraph 3.23gii of DMG]
(4) refer a customer to, or provide contact details for, another debt advice provider in circumstances where the firm is unable to provide appropriate advice or provide an appropriate debt solution for the customer; and

[Note: paragraph 3.23h of DMG]

(5) seek to ensure that a customer understands the options available and the implications and consequences for the customer of the firm’s recommended course of action.

[Note: paragraph 3.23i of DMG]

(1) The information and advice referred to in CONC 8.3 should be provided in a manner which is clear fair and not misleading to comply with Principle 7 and CONC 3.3.1 R, and should be in plain and intelligible language in accordance with CONC 3.3.2 R. A firm should encourage a customer to read the information and allow sufficient time between providing the information and entering into the contract to enable the customer to seek independent advice if so desired.

[Note: paragraphs 3.21, 3.35 and 3.36 of DMG]

(2) The firm’s services referred to in CONC 8.3 include any debt solution the firm offers to a customer. Therefore, in setting out fees or charges for a firm’s services, the fees and charges the firm charges in relation to a debt solution should be included.

(3) The serious problems related to debt in CONC 8.3.7 R are likely to include, where non-payment of a debt may result in the loss of a customer’s home or loss of access to essential goods or services and, in particular, where legal action is threatened or legal action is taken in relation to debts which may have that effect.

[Note: paragraph 3.23gi of DMG]

(4) A not-for-profit debt advice body should refer a customer to another not-for-profit debt advice body under CONC 8.3.7R (3) where, for example, it is unable to assist a customer.

(5) An appropriate not-for-profit debt advice body would be one that provides the most appropriate debt solution given the customer’s financial circumstances.
8.4 Debt solution contracts

8.4.1 A firm must provide a customer with a written contract setting out its terms and conditions for the provision of its services.

[Note: paragraph 3.40a of DMG]

8.4.2 A firm must include in its written contract (other than a credit agreement to which the Consumer Credit (Agreements) Regulations 2010 apply) the following matters:

1. the nature of the service to be provided by the firm, including the specific debt solution to be offered to the customer;

[Note: paragraph 3.40b of DMG]

2. the duration of the contract;

[Note: paragraph 3.40c of DMG]

3. the total cost of the firm’s service or, where it is not possible to state the total cost, the formula the firm uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;

[Note: paragraph 3.40c of DMG]

4. the circumstances in which a customer may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the customer may be required to pay in that case; and

[Note: paragraph 3.40d of DMG]

5. set out the duration and conditions for exercise of any right to cancel that may apply and any fees or charges the customer may be required to pay.

[Note: paragraph 3.40e of DMG]

8.4.3 A firm must not include the following terms in a contract with a customer:

1. a term requiring the customer to sign a declaration stating in any way that the customer understands the requirements of the contract;

[Note: paragraph 3.41a of DMG]
(2) a term restricting or prohibiting the customer from corresponding with or responding to a lender or with any person acting on behalf of a lender;

[Note: paragraph 3.41b of DMG]

(3) a term which states or implies the firm has no liability to the customer; or

[Note: paragraph 3.41c of DMG]

(4) a term which states or implies that there are no circumstances in which a customer is entitled to a refund.

[Note: paragraph 3.41d of DMG]

A firm may be required to make a refund of its fees and charges, in whole or in part, if a firm fails to deliver its service in whole or in part or it has carried out the service without reasonable care and skill.
8.5 Financial statements and debt repayment offers

8.5.1 A firm must ensure that a financial statement sent to a lender on behalf of a customer:

(1) is accurate and realistic and must present a sufficiently clear and complete account of the customer’s income and expenditure, debts and the availability of surplus income;

[Note: paragraph 3.24 of DMG]

(2) state any fees or charges being made by the firm;

(3) is sent only after having obtained the customer’s consent to send the statement and the customer’s confirmation as to the accuracy of the statement;

[Note: paragraph 3.26f and g of DMG]

(4) is provided to the customer’s lenders as soon as practicable after the customer has confirmed its accuracy; and

[Note: paragraph 3.26e of DMG]

(5) is also sent to the customer, together with any accompanying correspondence.

[Note: paragraph 3.26h of DMG]

8.5.2 The format of the financial statement sent to lenders on behalf of the customer should be uniform and logically structured in a way that encourages consistent responses from lenders and reduces queries and delays. Firms may wish to use the Common Financial Statement facilitated by the Money Advice Trust or an equivalent or similar statement.

[Note: paragraph 3.24 of DMG]

8.5.3 (1) Where a firm makes an offer to a lender to repay a customer’s debts on behalf of a customer, the offer should be realistic, sustainable and in accordance with CONC 8.3.2 R should, in particular, have regard to the best interests of the customer.
(2) A sustainable offer should enable the customer to meet repayments in full when they are due out of the customer's disposable income for the whole duration of the repayment proposal.

(3) Setting the offer should take full account of a customer's obligations to pay taxes, fines, child support payments and those debts which could result in loss of access to essential goods or services or repossession of, or eviction from, the customer's home.

(4) In considering what are essential goods and services, the firm should consider the customer's personal circumstances, for example, for disabled persons debts for telecommunications services are likely to be essential.

[Note: paragraphs 3.25, 3.26c and 3.28d of DMG]

8.5.4 A firm must:

(1) take reasonable steps to verify the customer's identity, income and outgoings;

[Note: paragraph 3.26a of DMG]

(2) seek explanations if a customer indicates expenditure which is particularly high or low; and

[Note: paragraph 3.26b of DMG]

(3) where applicable, notify a customer that a particular lender will not deal with the firm (for whatever reason), as soon as possible after the firm becomes aware that the customer owes a debt to that lender.

[Note: paragraph 3.26l of DMG]

8.5.5 What are reasonable steps for verification of the identity, income and outgoings of a customer depends on the circumstances of the case and the type of service offered by the firm. Estimates of expenditure would be reasonable where precise figures are not readily available. The Common Financial Statement includes expenditure guidelines, but where a firm uses the Common Financial Statement or an equivalent or similar statement which includes such guidelines, the use of expenditure guidelines needs to take into account the individual circumstances of the customer.

Note: paragraph 3.26a (box) of DMG]
8.6 Changes to contractual payments

8.6.1  Where a firm gives advice to a customer not to make a contractual repayment or to cancel any means of making such a repayment before any debt solution is agreed or entered into, the firm must be able to demonstrate the advice is in the customer's best interests.

(2) Where a firm gives advice of the type in (1), the firm must advise the customer (C) that if C adopts the advice C should notify C's lenders without delay and explain that C is following the firm's advice to this effect.

[Note: paragraph 3.27 of DMG]

8.6.2  If the effect of advice the firm gives (if adopted by the customer) is that contractual repayments are not made or are not made in full (for one or more repayments), the firm must warn the customer of the actual or potential consequences of taking that course of action.

[Note: paragraph 3.28a of DMG]

8.6.3  A firm must only advise a customer to make repayments at a rate lower than the rate necessary to meet interest and charges accruing where it is in the customer's best interests.

[Note: paragraph 3.28b of DMG]

8.6.4  (1) The FCA expects it will generally be in the customer's best interests to maintain regular payments to lenders (even if the repayment is less than the full sum due).

(2) An example where it might be in the customer's best interests not to repay at the rate necessary to meet interest and charges accruing is where there is insufficient disposable income to meet essential expenditure of the type referred to in CONC 8.5.3 G. Where that is the case, the firm should explain clearly to the customer why this course of action is necessary and the consequences of the course of action.

8.6.5  Where a firm has advised a customer not to make contractual repayments (in full or in part) or to cancel the means of making such payments or not to make repayments necessary to meet interest and charges accruing, the firm must advise the customer if it becomes clear that that course of action is not
producing effects in the customer's best interests to enable the customer to take action in the customer's best interests.

Note: paragraph 3.28c of DMG]

8.6.6

(1) An example of an effect not in the customer's best interests would be if a lender does not agree to stop applying interest and charges to the customer's debt.

[Note: paragraph 3.28c of DMG]

(2) Where it becomes clear that the course of action in CONC 8.6.5 R is not producing effects in the customer's best interests the firm should, where withdrawing from the debt management plan may be in the customer's best interests, advise the customer of the possibility of withdrawing from the plan.
8.7 Charging for debt counselling, debt advice and related services

8.7.1 (1) The distance marketing rules in CONC 2.6, including the right to cancel in CONC 11, apply to firms with respect to distance contracts which are credit agreements, consumer hire agreements and agreements the subject matter of which comprises, or relates to, debt counselling, debt adjusting, providing credit information services and providing credit references. CONC 11 excludes various credit agreements from the right to cancel.

(2) Where a consumer uses the right to cancel under CONC 11 or under the Financial Services (Distance Marketing) Regulations 2004 to cancel an agreement with a firm to set up or administer a debt solution, the firm should refund any sum paid, less a charge that the firm is entitled to make under CONC 11.1.1 R or regulation 13(6) to (9) of those Regulations.

[Note: paragraphs 3.29 and 3.31 of DMG]

(3) The firm may be entitled to impose a charge in (2) if the customer requested the firm to begin to carry out its service within the cancellation period (see CONC 11.1.1 R or regulation 10 of the Financial Services (Distance Marketing) Regulations 2004).

8.7.2 A firm must ensure that the obligations of the customer in relation to the amount, or the timing of payment, of its fees or charges:

(1) do not have the effect that the customer pays all, or substantially all, of those fees in priority to making repayments to lenders in accordance with the debt management plan; and

(2) do not undermine the customer’s ability to make (through the firm acting on the customer’s behalf) significant repayments to the customer’s lenders throughout the duration of the debt management plan, starting with the first month of the plan; but

(3) paragraphs (1) and (2) do not prevent, to the extent the firm complies with all applicable rules, a firm operating a full and final settlement model, in which the firm holds money on behalf of the customer and does not distribute that money promptly, pending negotiating a settlement with the customer’s lenders.

[Note: paragraphs 5.3 and 5.4 of the Debt Management Protocol]
8.7.3 A firm must:

(1) For the purposes of CONC 8.7.2R (2), an obligation is likely to be viewed as undermining the customer’s ability to make significant repayments to the customer’s lenders if it has the effect that the firm may allocate more than half of the sums received from the customer in any one-month period from the start of the debt management plan to the discharge (in whole or in part) of its fees or charges.

(2) Once the customer has paid any initial fee for the arrangement and preparation of the debt management plan, or, if earlier, once six months from the start of the plan have elapsed, the FCA would expect there usually to be a reduction in the proportion of the sums received from the customer that the firm allocates to the discharge of its fees and charges.

(3) A firm should spread any charges or fees payable by the customer for the administration or operation of the debt management plan following its making evenly over the duration of the plan.

(4) The proportion of the sums received from a customer in order to discharge the firm’s fees or charges should take account of the level of repayments the customer in question makes.

8.7.4 A firm must:

(1) in good time before entering into a contract with the customer, disclose the existence of any commission or incentive payments relevant to the service provided to the customer between the firm and any third party and at any time, if the customer requests, disclose the amount of any such commission or incentive payment;

[Note: paragraph 3.34b and c of DMG]

(2) send a revised financial statement in the same format as that required under CONC 8.5.1 R to the customer’s lenders where the firm’s fees or charges alter during an arrangement and would affect the amount available for distribution to lenders;

[Note: paragraph 3.34f (box) of DMG]

(3) at the earlier of, where the firm identifies or it is established that advice provided by the firm to the customer was incorrect or was not appropriate to the customer, refund or credit to the customer’s account fees or charges imposed for that advice;

[Note: paragraph 3.34m of DMG]

(4) make an appropriate refund of fees or charges paid where the whole or any part of the service as agreed with the customer has not been provided or not provided with a reasonable standard of skill and care.

[Note: paragraph 3.34o of DMG]

8.7.5 A firm, in presenting its fees, costs and charges, should distinguish the fees payable for the firm’s services from any charges payable for court proceedings or other insolvency proceedings.
A firm must not:

(1) without a reasonable justification, switch a customer from one debt solution to another while making a further charge for setting up or administering the new debt solution to the extent that some or all of that work has already been carried out by the firm;

[Note: paragraphs 3.32 and 34k of DMG]

(2) switch a customer to a different debt solution, without obtaining the customer’s consent after having fully explained to the customer the reason for the change;

[Note: paragraph 3.34l of DMG]

(3) require or take any payment from a customer before the firm has entered into contract with the customer concerning a debt solution;

[Note: paragraph 3.34d of DMG]

(4) request any payment from a customer’s payment account, unless the customer has specifically authorised the firm to do so and has not cancelled that authorisation;

[Note: paragraph 3.34d (box) of DMG]

(5) accept payment for fees or charges by credit card or another form of credit (excluding a payment where the firm does not know and cannot be expected to know that the customer’s current account is in debit or would be taken into debit by the payment);

[Note: paragraph 3.34e of DMG]

(6) impose cancellation charges that are unreasonable or disproportionate when compared to the actual costs necessarily incurred by the firm in reasonably providing its service;

[Note: paragraph 3.34h of DMG]

(7) claim a fee or charge from a customer or take payment from a customer’s account which is not provided for in the agreement with the customer, or where it is provided for but is, or is likely to be, unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (for contracts entered into before 1 October 2015) or the Consumer Rights Act 2015;

[Note: paragraph 3.34i of DMG]

(8) where the firm identifies that advice provided by the firm to the customer was incorrect or was not appropriate to the customer, charge an additional fee for further or revised advice; or

[Note: paragraph 3.34m of DMG]
(9) request, suggest or instruct customers seeking to recover refunds of fees from the firm to make contact with the firm on a premium rate telephone number.

[Note: paragraph 3.34n of DMG]

8.7.7 Firms should note the effect of the call charges rule in GEN 7.
8.8 Debt management plans

8.8.1 A firm in relation to a customer with whom it has entered into a debt management plan must:

(1) maintain contact with the customer;

[Note: paragraph 3.44 of DMG]

(2) regularly monitor and review the financial position and circumstances of the customer;

[Note: paragraph 3.44 of DMG]

(3) adapt the debt management plan to take into account relevant changes in the financial position and circumstances of the customer;

[Note: paragraph 3.44 of DMG]

(4) inform the customer without delay of the outcome of negotiations with lenders, in particular, where the lender has:

(a) refused to deal with the firm; or
(b) returned payments to the firm; or
(c) refused the debt repayment offer; or
(d) refused to freeze interest or charges accruing;

[Note: paragraph 3.45a of DMG]

(5) inform the customer of any material developments about the relationship between the customer and the customer’s lenders;

[Note: paragraph 3.45b of DMG]

(6) provide the customer with copies of correspondence or documentation relating to material developments relevant to the relationship between the customer and the customer’s lenders;

[Note: paragraph 3.45b of DMG]

(7) where the firm makes repayments on behalf of the customer:

(a) monitor the customer’s repayments for evidence which suggests a change in the customer’s financial circumstances;

(b) review, and amend or terminate, where appropriate, the customer’s debt management plan at the earlier of:
(i) each anniversary of entering into the plan; or
(ii) as soon as the firm becomes aware of a material change in the customer's circumstances; and
(c) inform the customer of the outcome of any reassessment;

[Note: paragraph 3.45c of DMG]

(8) provide a statement to the customer at the start of the debt management plan, and at least annually or at the customer’s reasonable request, setting out:
(a) a balance showing the amount owed by the customer, including any interest charges at the beginning of the statement period;
(b) fees, charges and other costs applied over the period of the statement, including any upfront fee or deposit, such as an initial arrangement fee, an arrangement fee, any periodic or management or administrative fee, any cancellation fee and any other costs incurred under the contract;
(c) a narrative explaining the type of fee applied, how the fee is calculated and to what it applies;
(d) the duration or estimated duration of the contract;
(e) the total cost of the firm's service over the duration or estimated duration of the contract; and
(f) monthly or other periodic payments made to lenders;

[Note: paragraphs 3.45cde of DMG]

(9) maintain adequate records relating to each debt management plan which the firm has administered for the customer until the contract between the customer and the firm is completed or terminated;

[Note: paragraph 3.45i of DMG]

(10) check the accuracy of the details of the customer’s accounts; and

[Note: paragraph 3.45j of DMG]

(11) use reasonable endeavours not to send inaccurate information to lenders.

[Note: paragraph 3.45j of DMG]

(1) Evidence that there may have been a material change in a customer’s financial circumstances is likely to include where a customer who has not previously missed payments under a debt management plan misses such payments.

[Note: paragraph 3.45ci of DMG]

(2) Where the firm informs a customer of the outcome of a review of a debt management plan, it should seek to discuss with the customer any changes to the plan or to the firm’s service at the earliest reasonably opportunity.
(3) In CONC 8.8.1R (6) correspondence or documentation relating to material developments would include, for example, the issue or threat of issue of default notices or legal proceedings.

[Note: paragraph 3.45ciii of DMG]

[Note: paragraph 3.45b of DMG]
8.9 Lead generators: including firm responsibility in dealing with lead generators

8.9.1 The Principles (in particular Principle 6 and Principle 7) apply to actions of a firm dealing with a customer who has been referred to it through a lead generator. For example, where a firm acts on a sales lead and knows or ought to know that the lead generator is using misleading information, advice or actions to obtain a customer’s personal data is likely to amount to a breach by the firm of Principle 6 and Principle 7.

8.9.2 A firm must take reasonable steps before entering into an agreement to accept sales leads from a lead generator for debt counselling or debt adjusting or providing credit information services to ensure:

1. that any of the lead generator’s advice, any content of its website and advertising and any of its commercial practices comply with applicable legal requirements, including the Consumer Protection from Unfair Trading Regulations 2008;

2. that the lead generator is registered with the Information Commissioner’s Office under data protection legislation; and

3. that the lead generator has processes in place to ensure it complies with that Act and with the Privacy and Electronic Communications (EC Directive) Regulations 2003.

[Note: paragraph 3.9 of DMG]

8.9.3 The steps required to satisfy the requirement in CONC 8.9.2 R should depend upon the regularity with which the firm intends to accept sales leads from the lead generator. If sales leads provided by a lead generator are likely to be on a single or occasional basis, less rigorous checks should be required than for a specialist sales lead generator.

[Note: paragraph 3.9 (box) of DMG]

8.9.4 A firm must take reasonable steps, where it has agreed to accept sales leads from a lead generator for debt counselling or debt adjusting or providing credit information services, to ensure that the lead generator:

1. where it does not have a Part 4A permission for debt counselling and is not an appointed representative of a firm with such permission,
does not carry on debt counselling in obtaining or passing on sales leads to the firm;

(2) where it carries on debt counselling, has and continues to have a Part 4A permission for debt counselling or is an appointed representative of a firm with such permission;

(3) where it does not have a Part 4A permission covering the relevant activity, does not claim to or imply that it provides debt counselling or debt adjusting or that it is providing credit information services;

[Note: paragraph 3.12 of DMG]

(4) complies with applicable legal requirements, including the [Consumer Protection from Unfair Trading Regulations 2008](#) in relation to any of its advice, any content of its website, any of its advertising and any of its commercial practices;

[Note: paragraph 3.9a DMG]

(5) makes the true nature of its services clear to customers, through any means of communication or promotion it uses;

[Note: paragraph 3.12 of DMG]

(6) where it seeks a customer’s personal data to pass on to a firm for a fee, it makes clear to the customer that the customer’s personal data will be passed on to the firm;

[Note: paragraph 3.12c of DMG]

(7) makes clear to a customer any financial interest it has in passing on a sales lead to the firm;

[Note: paragraph 3.12d of DMG]

(8) makes clear, if asked by a customer, the nature of its relationship with the firm;

[Note: paragraph 3.12e of DMG]

(9) does not falsely claim or imply in any way that it is or represents a charitable or not-for-profit body or government or local government organisation;

[Note: paragraph 3.12f of DMG]

(10) communicates with customers consistent with, and promotes, services the firm is able to provide;

[Note: paragraph 3.12h of DMG]

(11) complies with the [Privacy and Electronic Communications (EC Directive) Regulations 2003](#) and data protection legislation;

[Note: paragraph 3.11 of DMG]
(12) does not send, or cause to be sent, an electronic communication to a customer (C) unless C has previously notified the lead generator that C consents for the time being to such communications being sent or caused to be sent by the lead generator;

[Note: paragraph 3.12j of DMG]

(13) does not make or cause to be made by means of an automated calling system (which is capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system, and transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called) a call to a customer (C), unless C has previously notified the caller that for the time being C consents to such communications being made by or caused to be made by the caller on the line in question; and

[Note: paragraph 3.12j of DMG]

(14) enables customers to cancel using a clear and easy method their consent to be called or sent any communication.

[Note: paragraph 3.12m of DMG]

[Note: paragraphs 3.7 and 3.8 of DMG]

Guidance for firms

The FCA would expect firms that agree with lead generators to accept sales leads in relation to debt counselling or debt adjusting to be able to identify, upon request, all the lead generators from which they have received leads (with the FCA authorisation number, where applicable).

Claiming or implying a person is or represents, for example, a charitable organisation is likely to include operating a website which looks like, or is designed to look like, the website of such an organisation.

In complying with CONC 8.9.4 R a firm that agrees with a lead generator to accept sale leads should:

(1) check with the Information Commissioner’s Office that the lead generator is appropriately registered under data protection legislation; and

(2) check the lead generator’s Privacy and Electronic Communications (EC Directive) Regulations 2003 process documentation.
8.10 Conduct of business: providing credit information services

Application

8.10.1 This section applies to:

1. a firm with respect to providing credit information services in relation to information relevant to the financial standing of an individual;

2. a firm with respect to the activities set out in article 36H(3)(e) to (h) of the Regulated Activities Order (Operating an electronic system in relation to lending) in relation to a borrower under a P2P agreement.

Conduct

8.10.2 The Principles apply to a firm with respect to providing credit information services. A firm providing such services should, for example, set out clearly in any communication to a customer the extent of the service it is able to offer.

[Note: paragraph 3.46 of DMG]

8.10.3 A firm must not:

1. claim to be able to remove negative but accurate information from a customer’s credit file, including entries concerning adverse credit information and court judgments; or

   [Note: paragraph 3.47ai of DMG]

2. mislead a customer about the length of time that negative information is held on the customer’s credit file or any official register; or

   [Note: paragraph 3.47aii of DMG]

3. claim that a new credit file can be created, such as by the customer changing address.

   [Note: paragraph 3.47aiii of DMG]

8.10.4 It is likely to be a contravention of the Principles, for example Principles 6 and Principle 7, where a firm:
(1) claims in a communication to a customer to be able to remove negative but accurate entries from a customer’s credit file, but where the customer enquires about this service the customer is offered instead the firm’s service as a lender or a credit broker; or

(2) fails to inform a customer that a credit reference agency will not respond to the firm taking steps in relation to the customer’s credit file and will only send the customer’s credit file to the customer.

[Note: paragraphs 3.47cd of DMG]