

Chapter 8

Debt advice

8.1 Application

- 8.1.1** **R** 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** **G** ■ 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** **G** ■ 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** **R** ■ CONC 8.3.1R(14) does not apply to a *firm* with respect to *providing credit information services*.
- 8.1.4** **G** 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 **G** 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 **G** (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 **G** 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 **R** 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 *MoneyHelper*; and

(2) on its web-site the following link to the *MoneyHelper* web-site (<https://www.moneyhelper.org.uk/en/money-troubles/dealing-with-debt/use-our-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

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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;

[Note: paragraph 3.38c of *DMG*]

- (9) 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*]

- (10) 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*]

- (11) 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*]

- (12) how payments will be allocated to *lenders* and when payments will be made; and

[Note: paragraph 3.38k of *DMG*]

- (13) 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*]

- (14) 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*]

8.3.2

R 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*;
- and
- (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*]

8.3.2A **G** *Firms are reminded of ■ PERG 12.6G which contains guidance on the regulated activity of advising on conversion or transfer of pension benefits.*

8.3.3 **G** *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*]

8.3.4 **R** *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: paragraph 3.23o of DMG]

[Note: paragraphs 3.23 and 3.38 of DMG]

8.3.4A

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- (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

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The information required by ■ CONC 8.3.4R 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

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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

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- (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 be 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

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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*]

8.3.8

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- (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.

Prohibition on debt packager remuneration from debt solution providers Scope

8.3.9

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- (1) ■ CONC 8.3.11R to ■ CONC 8.3.15R:
 - (a) apply to a *firm* with respect to *debt counselling* where the *firm* does not itself provide *debt solutions*; and
 - (b) do not apply to a *firm* that is a *not-for-profit debt advice body*.
- (2) A *firm* is treated as not itself providing *debt solutions* for the purposes of ■ CONC 8.3.9R(1)(a) where the *firm*:

- (a) provides *debt solutions* on a single or occasional basis; and/or
- (b) receives only an insignificant amount of its total annual revenue from providing *debt solutions*.

Context, purpose and anti-avoidance

8.3.10

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- (1) *Firms* are reminded that when referring *customers* to *debt solution* providers, or carrying on related services, a *firm* must comply with its obligations under:
 - (a) *Principle 12* (Consumer Duty) to act to deliver good outcomes for *retail customers* and/or *Principle 6* (Customers' interests) to pay due regard to the interests of its *customers* and treat them fairly; and
 - (b) ■ CONC 8.3.2R(1) to ensure that all advice given and action taken by the *firm*, its agent or its *appointed representative*:
 - (i) has regard to the best interests of the *customer*;
 - (ii) is appropriate to the individual circumstances of the *customer*; and
 - (iii) is based on a sufficiently full assessment of the financial circumstances of the *customer*.
 - (c) The purpose of the prohibition in ■ CONC 8.3.11R is to remove the conflict of interest between a debt packager's obligations under CONC, including those referred to in ■ CONC 8.3.10G(1), and the financial incentive to act in a way which generates revenue in the form of referral fees from *debt solution* providers.
 - (d) The effect of ■ CONC 8.3.9R(2) is that *firms* will not be able to avoid the prohibition in ■ CONC 8.3.11R by starting to provide a small number of *debt solutions* for that purpose.
 - (e) For the purposes of ■ CONC 8.3.9R(2)(b), the amount of total annual revenue received from providing *debt solutions* is unlikely to be considered significant if an undue risk of non-compliant debt advice arising out of a conflict of interest of the kind described in ■ CONC 8.3.10G(2) continues to exist.
 - (f) For the purposes of ■ CONC 8.3.10G(1)(a), during the period to which ■ CONC TP 8(6) to (7) applies, the *FCA* considers it unlikely that an increase in either the referral of *customers* to *debt solution* providers or carrying on related services, would be in accordance with *Principle 6* or *Principle 12*.

Prohibition

8.3.11

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- (1) A *firm* must not (and must take all reasonable steps to ensure that none of its *associates* or its *appointed representatives*):
 - (a) enter into an agreement to receive;
 - (b) solicit or accept; or
 - (c) seek to exercise, enforce or rely on rights or obligations under an agreement to receive,
 any commission, fee or any other financial consideration, directly or indirectly, from a *debt solution* provider in connection with the *firm*

referring *customers* to a *debt solution* provider, or any other related services, except as provided in ■ CONC 8.3.14R.

- (2) ■ CONC 8.3.11(1)(b) and ■ (c) do not apply where the *firm* has an accrued contractual right to payment for the referral, or related services, in relation to a *customer* prior to the coming into force of ■ CONC 8.3.11R(1).

8.3.12 **R** 'Related service(s)' for the purposes of ■ CONC 8.3.9R to ■ CONC 8.3.11R includes:

- (1) recommending a *debt solution* provider;
- (2) providing *debt counselling* services to *customers* prior to those *customers* being referred to a *debt solution* provider or entering into a *debt solution*; and
- (3) providing *debt counselling* services to *customers* who have been referred to the *firm* by a *debt solution* provider.

8.3.13 **R** '*Debt solution* provider(s)' for the purposes of ■ CONC 8.3.10G to ■ CONC 8.3.12R includes such providers' *associates* and *appointed representatives*.

8.3.14 **R** ■ CONC 8.3.11R does not apply to payments made:

- (1) pursuant to an enactment;
- (2) in relation to the administration by a 'money adviser' approved under The Debt Arrangement Scheme (Scotland) Regulations 2011 of a *customer's* application for a Debt Arrangement Scheme under those Regulations; or
- (3) by a person employed as an officer of:
 - (a) (in relation to England and Wales) the Insolvency Service;
 - (b) (in relation to Scotland) the Accountant in Bankruptcy; or
 - (c) (in relation to Northern Ireland) the Insolvency Service.

Record keeping

8.3.15 **G** *Firms* are reminded of their obligations in ■ SYSC 9.1.1R to keep orderly records, which must be sufficient to enable the *FCA* to monitor the *firm's* compliance with the requirements of the *regulatory system*.

Application of the prohibition to appointed representatives

8.3.16 **R** *Principals* which have an *appointed representative* to whom ■ CONC 8.3.9R(1) would apply if the *appointed representative* were an *authorised person* must take all reasonable steps to ensure that such an *appointed representative* complies with ■ CONC 8.3.11R as if the references in that *rule* to '*firm*' applied to such an *appointed representative*.

8.3.17

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The purpose of ■ CONC 8.3.16R is to prevent a debt packager *firm* from becoming an *appointed representative* in order to avoid ■ CONC 8.3.11R applying to it and continuing to be conflicted by the financial incentive to act in a way which generates revenue from *debt solution* providers.

8.4 Debt solution contracts

8.4.1 **R** 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 **R** 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 **R** 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*]

8.4.4

- G** 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 **R** 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 **G** 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 formerly facilitated by the Money Advice Trust, the Standard Financial Statement (SFS) facilitated by *MoneyHelper*, or an equivalent or similar statement.

[Note: paragraph 3.24 of *DMG*]

8.5.3 **G** (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

R 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

G 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** **R** (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** **R** 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** **R** 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** **G** (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** **R** 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**G**

- (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

G

(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 11.1.11 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

R

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

G

- (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

R

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

G

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.

8.7.6

RA *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

R

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

8.8 Debt management plans

8.8.1

R

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]

8.8.2

G

- (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.

[Note: paragraph 3.45ciii of *DMG*]

- (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 3.45b of *DMG*]

8.9 Lead generators: including firm responsibility in dealing with lead generators

8.9.1 **G** 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 **R** 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 **G** 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 **R** 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

8.9.5 **G** 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).

8.9.6 **G** 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.

8.9.7 **G** 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 **R** 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 **G** 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 **R** 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 **G** 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]

