

Chapter 8

Debt advice

8.7 Charging for debt counselling, debt advice and related services

8.7.1

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- (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

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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

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- (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

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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

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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 3.4k 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.