

Chapter 8

Debt advice



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.