

Direct line: 020 7066 0042
Email: caroline.gardner@fca.org.uk

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

18 January 2021

Our Ref: Portfolio Letter

Dear Board of Directors

Debt Purchasers, Debt Collectors and Debt Administrators

We are writing to:

- o set out our view of the key risks debt purchase, debt collection and debt administration firms pose to their customers or the markets in which they operate
- o outline our expectations of debt purchase, debt collection and debt administration firms, including how firms should be mitigating these key risks
- o describe our supervisory strategy and programme of work to ensure that firms are meeting our expectations, and harms are being remedied.

Our view of the key drivers of harm

We recognise that the increasing coronavirus-related restrictions placed on many areas of the UK during 2020 may lead to increased financial difficulty for some people, and that many people will continue to live in financial uncertainty as the impact of coronavirus continues. However, the harms that they are exposed to remain largely the same. We see 7 key ways in which consumers may be harmed:

1. Customer treatment harms

- Firms fail to recognise and address the needs and challenges facing vulnerable consumers and fail to ensure that they obtain the same fair outcomes as other consumers.
- Consumers' needs are not adequately assessed. This may result in consumers not receiving appropriate forbearance.

- Consumers do not receive clear information about, or resolution to their dispute/complaint, are incorrectly pursued for debts and feel harassed or inconvenienced by repeatedly chasing firms for answers.

2. **Litigation and unenforceable debts**

- When selecting customers to pursue for judgement through court action, firms take disproportionate action e.g. seeking judgement when they are aware the customer is vulnerable, or without due consideration to the customers' personal and financial circumstances, resulting in unfair treatment.
- Firms continue to seek or accept payment on extinguished debts. In their communications with customers, firms suggest or state that a customer may be the subject of court action for statute barred debts, when the firms know or reasonably ought to know that the relevant limitation period has passed.

3. **Firms' Prudential Resources**

- A firm may exhaust available financial resources, fail to meet its obligations as they fall due and exit the market in a disorderly fashion, due to a failure to adequately manage resources. This could leave consumers without appropriate communications or clear information about the status of their debt, who to pay and when, impacting the consumers' ability to pay back the debt effectively.

Our expectations and areas of focus

We are prioritising our supervisory strategy and programme of work to ensure that firms are meeting our expectations, and harms are remedied in these areas:

Customer treatment

Firms in this portfolio can be leaders in managing regulated consumer credit debts and non-regulated debts. However, we continue to see some firms fail to treat customers fairly. The most common causes of this are weak operational oversight, ineffective systems and controls, and insufficient emphasis placed on Treating Customers Fairly within a firms' culture. Increasing consumer debt has the potential to increase the prevalence of consumer harm in this portfolio, if these causes of harm are not addressed. We will take action where we identify firms causing or likely to cause significant harm to consumers.

Vulnerable customers

With growing numbers of people in vulnerable circumstances it is more relevant than ever that firms recognise and respond to their needs. In July 2020, we published a consultation ([GC20/3](#)) on [Guidance for firms on the fair treatment of vulnerable customers](#), and we aim to publish the final Guidance in early 2021. The Guidance aims to create a practical shift in firm behaviours so vulnerable consumers can achieve the same outcomes as other consumers. Firms should embed the fair treatment of vulnerable consumers into their culture, policies and processes through the whole customer journey. Once the guidance is published we will monitor firms' compliance in this area. If we find that vulnerable customers have not been treated fairly, we will act where we consider it appropriate to do so.

Forbearance and due consideration

We expect consumers in default or arrears difficulties to be treated with forbearance and due consideration (CONC 7.3.4 R). This includes firms agreeing sustainable repayment arrangements, so that customers can meet their essential expenses and priority debts. It also includes signposting customers to free debt advice. Where a customer has multiple non-priority debts, we expect firms not to pressurise them to pay a debt in unreasonably large amounts (CONC 7.3.10).

Through our supervisory work we have identified poor practices which could have an adverse impact on a customer's financial circumstances. Our findings included instances where firms:

- threatened to take legal action during periods where the firm should have actively suspended pursuit of the recovery of a debt where the customer informed the firm that they were seeking help from a debt counsellor (CONC 7.3.12)
- continued to apply interest and charges to arrears on defaulted accounts without considering suspending, reducing, waiving or cancelling these in line with the guidance in CONC 7.3.5G
- did not consider whether customers will understand what is meant in practice by 'legal action' or 'collections activity' as part of their obligation to ensure that communications are clear, fair and not misleading.

We will engage with firms to assess forbearance practices and where we see consumer harm we will act using our full range of regulatory tools.

Disputed debts

Customers may dispute debts indicating that they are not the borrower or hirer under the agreement in question, the debt does not exist or the amount being pursued is incorrect. If firms do not handle disputes in line with our handbook (CONC 7.5 and CONC 7.14) there is a risk that customers repay debts they do not owe, or pay back more than they need to. In recent years, our work has shown that there is room for improvement in the way in which firms deal with disputed debts. We have seen:

- customers raise disputes multiple times before they were recorded as a dispute and appropriately dealt with;
- unclear communications on the status of a debt and the outcomes of dispute investigations, and disputes with long periods of inactivity not being quickly resolved, sometimes because a firm needs information from an original creditor;
- customer complaints, which are not disputed debts, raised as a disputed debt and therefore not managed in line with our complaints handling rules (Dispute Resolution: Complaints sourcebook (DISP) rules).

In circumstances where a dispute extends to, or results in a complaint, the firm is required to comply with our [complaint handling rules](#).

Pursuing litigation and unenforceable debts

Where litigation is pursued and costs or interest are added to a claim, the debt increases, and the burden falls on the consumer. We expect firms to consider how fair it is to pursue litigation without fully exploring other more proportionate options (CONC 7.3.14 & CONC 7.3.18).

In certain circumstances, a debt may become statute-barred and be unenforceable, meaning that the collection activity can continue but a claim can no longer be presented to court. In Scotland, a debt may cease to exist and only be recoverable in specific circumstances (CONC 7.15).

We expect firms to have effective processes in place to identify, monitor and manage the risks they are or might be exposed to (SYSC 4.1.1 R) and expect firms' current policy, processes, systems and controls to be adequate and effective at mitigating the key risks of harm to consumers when undertaking litigation or applying limitation rules. Equally, we expect firms to pay due regard to the interests of their customers and treat them fairly (Principle 6), and to pay due regard to the information needs of its customers, and communicate information to them in a way which is clear, fair and not misleading (Principle 7). We will monitor the activities of debt purchaser firms and their agents, and take appropriate action where we see harm.

Firms' prudential resources

In June 2020, we published [Our framework: assessing adequate financial resources](#). Firms prudentially-regulated by the FCA play an important role in supporting the integrity of the UK financial system. The Covid-19 pandemic underlines the need for all firms to have adequate resources in place. We use several data sources to monitor indicators of potential harm, including firm failures and will engage with firms where we consider regulatory obligations have been breached. This includes where we learn that firms are at risk of exhausting cash reserves/become illiquid and may need to exit the market.

Our Supervisory Strategy

On 24 April 2019, we published our revised [Approach to Supervision](#) which sets out the purpose of, and our approach to, supervising firms and individuals. This document builds on [Our Mission](#), explaining how we supervise 60,000 firms serving retail and wholesale consumers.

All firms in the financial services industry are expected to conduct their activities in a way that treats customers fairly, provides clear communications to consumers, resolves disputes and complaints fairly, and that complies with FCA Principles and FCA Handbook rules and guidance. We expect you to reflect on the issues highlighted in this letter to challenge how your firm operates to minimise the consumer harm it may cause.

As part of our supervision of firms, we will engage with firms to discuss their business models, strategies, and cultures. Our work plan will also employ appropriate supervisory tools to test, and where necessary mitigate, the potential areas of harm. Where firms are not meeting our expectations, we will act (SUP 1A.3).

Regulatory reporting

Principle 11 includes a requirement for firms to disclose to the FCA anything relating to the firm of which the FCA would reasonably expect notice. We expect all firms in this portfolio to be aware of the requirements and guidance in SUP 15, and to submit notifications as required. This should be when an issue or event is identified, and firms should not wait until resolution to notify us. An example of where we expect to be notified is when a firm's business model is subject to change that would have a significant impact on the firm's risk profile, resources or consumers. This may happen when a firm previously involved in debt collection, but with relevant permissions, purchases significant new debt; or where an existing debt purchase firm chooses to place its current or new debt purchases into a separate entity or fund not regulated by the FCA.

Contact

If you have any questions, please contact your normal supervisory contact on 0300 500 0597. This is the primary point of contact for your firm's interactions with the FCA. You can also email us at firm.queries@fca.org.uk. However, there may be times when your firm faces urgent issues of strategic importance. If this happens, please contact me on 020 7066 0042, or at Caroline.Gardner@fca.org.uk. If I am not available, then please contact one of my Managers, Vicki Wright, on 020 7066 0296 or at Vicki.Wright2@fca.org.uk.

Yours faithfully

Caroline Gardner

Head of Department

Supervision - Retail and Authorisations Division