

5 October 2018

Dear CEO

**The FCA's expectations of debt packager firms providing debt advice and counselling services**

We have undertaken a review of a small sample of debt advice provided by Debt Packager firms and are very concerned about the poor standards we have seen. The poor standards may result in investigation by our Enforcement Division. This will continue to be an area of focus for us. We are asking you as the CEO of your firm to review:

- your quality of debt advice
- the firm's identification and treatment of vulnerable customers
- financial promotions, and
- systems and controls.

We expect you to ensure that your firm is meeting the requirements set out within this letter and attached [Annex A](#).

Firms that provide debt advice and counselling services to consumers, in line with our rules and principles, can provide a valuable service to society.

**Debt packager firms**

There is a sub-sector of advice firms which work on a commercial and/or remunerative model. Typically, the service provided by these firms will include: gathering customer information; providing debt counselling advice on the debt solutions available; recommending a debt solution for the customer; and, referring on to a 3<sup>rd</sup> party provider. Upon this referral, the firm will be paid a referral fee by the 3<sup>rd</sup> party provider which differs according to the solution recommended. For the purposes of this letter this model will be referred to as the 'debt packager model'.

We are writing to remind you of our expectations of firms who operate this model, referred to here as 'debt packager firms'. We expect debt packager firms to ensure that their business model operates in a way that puts the fair treatment of customers at the heart of their business.

## Why we are asking you to do this

We have concerns that this business model has the potential to cause harm to customers. As a CEO you are expected to manage any potential conduct risk within your firm and take appropriate action to mitigate and prevent harm to your customers.

We understand that debt packager firms may be receiving higher fees for a specific debt solution such as an Individual Voluntary Arrangement (IVA) in comparison to other debt solutions. This may create a conflict with a key requirement of our rules which requires that staff (whether employees, agents or appointed representatives (ARs)) are not incentivised to provide advice that:

- does not have regard to the best interests of the customer, or is not appropriate to the customer's individual circumstances, or
- is not based on a sufficiently full assessment of the customer's financial circumstances.

We are concerned that the incentive to increase revenue streams could be a driver for a poor conduct culture in which firms may prioritise an IVA referral over a more appropriate solution. This may result in an inappropriate outcome for the customer. For example, if a customer is inappropriately advised to enter into an IVA and is unable to keep up repayments then this may result in the customer being subject to a petition for bankruptcy. Potentially, much of the customer's contribution will have gone on fees and not repaid the debt, which would remain outstanding.

Customers who are struggling to repay their debts can be among the most vulnerable in society. Debt packager firms can play a key role in their customer journey. We expect your firm to have established policies and procedures that enable staff to appropriately identify and support vulnerable customers. This includes ensuring that timely referrals are made to free advice services, where appropriate.

## Key rules and guidance

While not exhaustive, this Dear CEO letter highlights a number of key rules alongside some associated guidance, contained within the FCA's Handbook, that we expect firms to consider when assessing if they are achieving appropriate customer outcomes and acting in accordance with our FCA Handbook.

Key rules and guidance include, but are not limited to: the [Threshold Conditions](#); the high level [Principles for Business](#) (PRIN); and, the [Consumer Credit Sourcebook](#) (CONC).

When reviewing your firm's compliance with FCA requirements, we expect you to ensure that you are putting customer interests at the heart of the business to achieve the right outcomes. In particular, we expect debt packager firms to:

- make a sufficiently full assessment of the customer's circumstances to ensure that the advice provided is appropriate
- ensure that your staff have the necessary skills, knowledge and expertise to provide advice
- ensure that vulnerable customers are identified and receive appropriate support throughout their customer journey
- ensure that the financial promotions and customer communications used by your firm, its employees and its agents are clear, fair and not misleading and, where required by our rules, contain prominent signposting to the Money Advice Service (MAS), and

- maintain appropriate systems and controls, including in relation to the risks and requirements highlighted in this letter. Where relevant, this could extend to advice provided by any of the firm's appointed representatives (AR's).

Our expectations are set out in more detail in Annex A of this letter. You must ensure customers receive appropriate debt advice that has regard to their best interests and that the debt solution they are advised on is suitable to their individual needs.

The contents of this letter are separate from the [thematic review of the debt management sector](#). Findings from the thematic review will be published in line with the timetable set out in the attached document.

### **Action required by firms**

As the CEO of an FCA-regulated firm, we expect you to read this letter and Annex carefully and consider what, if any, improvements you need to make to satisfy yourself that you are meeting the requirements set out within this letter and attached Annex A. If you are a Principal firm with an AR network then you are responsible for reviewing their compliance.

You do not need to respond to this letter. However, failure to comply with our regulatory requirements could lead to our taking enforcement action and, potentially, to a suspension or removal of a firm's permissions.

If you have any queries about this letter please address them to: [DebtPackagers@fca.org.uk](mailto:DebtPackagers@fca.org.uk)

Yours faithfully,

Jonathan Davidson

Director of Supervision – Retail and Authorisations

## **Annex A**

### **Provision of suitable, affordable and sustainable debt management solutions**

Principles 2, 6 and 9 in PRIN require you to pay due regard to the interests of your customers. We expect authorised firms to treat their customers fairly, to communicate information to them in a way which is clear, fair and not misleading and to conduct their business with due skill, care and diligence.

The rules and guidance on financial promotions and communications that apply to debt advice are set out in Chapter 3 of CONC. Chapter 8 of CONC sets out applicable rules on debt advice. These rules apply equally to all firms that carry on debt counselling, whether they are a not-for-profit body or a commercial organisation.

### **Financial Promotions and customer communications**

We expect your firm (and any 3rd party firm that you use) to ensure that all communications or financial promotions (including websites and firm documentation) are clear, fair and not misleading in line with the rules set out at CONC 3. Additional requirements are also set out at CONC 8.2.4 which requires your first communication with a client to include prominent signposting to the Money Advice Service (MAS). You must also include a prominent link to MAS on your website.

CONC 3.9 applies to a financial promotion or communication with a customer in relation to debt advice. CONC 3.9.3R states that firms must ensure that the contents of a financial promotion or communication with customers includes (among other things, and to the extent that the information in question has not previously been provided to the customer):

- a statement of the services they offer
- the statement must also explain the nature of any relationship with a business associate which is relevant to the services offered, and
- clarification of whether any aspect of the services are provided by a third party or at extra cost.

CONC 3.9.3R also requires that the statement includes an explanation of the risks of entering into an individual voluntary arrangement or a protected trust deed.

In addition, CONC 3.9.3 requires that firms must ensure that, where another option for dealing with a customer's debts is available, a statement is given that another option is available and may be suitable for that customer.

### **Debt advice**

CONC 8.3 also sets out a number of requirements which firms must apply to their financial promotions or communications with a customer in relation to debt advice.

You must provide your customers with a source of impartial information on the range of debt solutions available to the customer in the relevant country of the UK (CONC 8.3.7R(1)).

And before giving advice or any recommendation on a particular course of action, CONC 8.3.7R(2) requires you to carry out: a reasonable and reliable assessment of:

- the customer's financial position (income, capital and expenditure)
- 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
- any other relevant factors (including any known or reasonably foreseeable changes in the customer's circumstances such as a change in employment status).

This is key to ensuring that debt management solutions are affordable and sustainable.

CONC 8.3.2 R(1) requires that all advice given and the action you take must:

- have regard to the best interests of the customer
- be appropriate to the individual circumstances, and
- be based on a sufficiently full assessment of the financial circumstances of the customer.

You must also ensure that customers receive sufficient information about the available options identified as suitable for the customers' needs, and that you explain the reasons why you consider the available options suitable and other options unsuitable.

To ensure the customer can make a fully informed decision about which solution they may wish to take up, CONC 8.3.4R requires you to ensure that the advice you provide to a customer, whether before you have entered into contract with the customer or after:

- is provided in a 'durable medium' (for example, in writing)
- makes clear which debts will be included in any debt solution and which debts will be excluded from any debt solution, and
- warns the customer of the actual or potential advantages, costs and risks of each option available to the customer, with any conditions that apply for entry into each option.

CONC 8.3.4R sets out further requirements that your advice must satisfy, including the requirement that it takes proper account of the individual needs of, and any requests made by, the customer.

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 (CONC 8.3.5G).

And 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 3.3.1R, and should be in plain and intelligible language in accordance with CONC 3.3.2R. You should encourage the 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 (CONC 8.3.1G).

If the assessment causes you to send a financial statement to the customer's creditors, you will also need to ensure that you comply with the rules relating to financial statements. CONC 8.5.1R requires you to ensure financial statements sent to lenders are accurate and realistic.

You should not unfairly incentivise your staff (whether employees, agents or appointed representatives of your firm) to the extent that an incentive might lead the firm not to comply with CONC 8.3.2R (CONC 8.3.6G).

The FCA expects you to be able to demonstrate compliance with your obligations under the entirety of CONC 8 when giving debt advice to consumers. This includes, but is not limited to, the obligations highlighted above.

### **Vulnerable customers**

You should ensure that you have in place effective, clear policies and procedures to identify particularly vulnerable customers and to deal with such customers appropriately, to show compliance with CONC 8.2.7.

### **Systems and controls**

SYSC 9.1.1R requires that you must arrange for orderly records to be kept of your business sufficient to enable the FCA to monitor your compliance with our regulatory requirements. You are expected to be able to evidence that you are complying with your obligations in CONC 8 and other parts of the Handbook. You should also be able to demonstrate that you have adequate staffing, expertise and systems and controls to provide a service to your customers consistent with your regulatory obligations.

### **Use of lead generators**

CONC 8.9 in our Handbook sets out the FCA's rules relating to lead generators. Your firm must ensure that before it enters into agreements to accept sales leads from lead generators for debt counselling or debt adjusting or providing credit information services that it has conducted due diligence in respect of these firms to ensure compliance with CONC 8.9.2R.

### **Responsibilities of Principal firms for appointed representatives (ARs)**

Under section 39(3) of the Financial Services and Markets Act 2000 (FSMA), the principal of an appointed representative (AR) firm is responsible, to the same extent as if it had expressly permitted it, for anything the AR does or omits to do, in carrying on the business for which the firm has accepted responsibility. SUP 12 gives guidance on the ARs and the responsibility of a firm for the conduct of its ARs.

This is not an exhaustive list of the Handbook requirements in relation to debt advice. It is your responsibility to ensure that you comply with CONC and, as applicable, the rest of our Handbook.