

FCA MIGRATION BRIEFING NO.3

DEBT ADVICE & LEAD GENERATORS

BACKGROUND

The Financial Conduct Authority, (FCA), consultation paper 13/10 ***“Detailed proposals for the FCA regime for consumer credit”*** includes draft rules and guidance for the new regime for regulation of the debt management sector from 1st April 2014¹.

The FCA have proposed a new chapter (17) of the Perimeter Guidance manual (PERG) which is entitled **“Consumer Credit Debt Counselling”** and attempts to define what is generic advice and information, that a non-authorized lead introducer can provide and what is regulated debt advice that only an authorized firm or an appointed representative can provide.

The draft rules and guidance for lead generators are outlined in the [Consumer Credit Sourcebook](#) (CONC). In simple terms lead generators can only provide generic information/advice about debts. If they provide any element of debt advice/counselling then they will need to be either directly authorised by the FCA or be an Appointed Representative.

PERG 17: Perimeter Guidance manual: Consumer Credit Debt Counselling

The purpose of the new chapter is to consider the scope of the regulated activities specifically relating to consumer credit debt counselling. Article 39E of the October 2013 Regulated Activities Order defines a regulated debt advice activity as one that involves:

a) Giving advice to a borrower about the liquidation of a debt due under a credit agreement

and

b) Giving advice to a hirer about the liquidation of a debt due under a consumer hire agreement

The term “due” is defined by the FCA as debts immediately payable and also future payments. It includes debts not overdue/in arrears.

The liquidation of a debt can cover:

- Paying off the debt in full and on time;
- Agreeing a rescheduling or a temporary halt to paying off a debt;
- The debtor being released from the debt;
- Agreeing a reduced repayment with the creditor including token payments;
- A third party taking over the debtors obligation to discharge the debt;

¹ final rules are expected to be published towards the end of February 2014

- Discharging the debt or making it unrecoverable via insolvency procedures such as bankruptcy, IVA or DRO.

What is regulated debt advice, information and generic advice?

For the FCA, advice means giving an opinion as a guide to the action to be taken by a debtor. By its very nature the boundary between advice and information may at times be blurred, hence the FCA have set out a set of examples which seek to demonstrate what is and what is not debt counselling.

It is worth noting that FCA's concept of advice includes any communication (e.g. face to face, telephone, email/letter or via interactive software), with the debtor that includes a recommendation and an element of opinion from the adviser that could influence the debtor's decision whether or not to undertake a course of action. In contrast the provision of information is that which allows debtors to make their own choice on how to deal with their debts with no judgement or recommendation from the adviser on the suitability of a particular course of action. Information involves statements of fact or figures and is information that is balanced and neutral without any comment or value judgement.

Generic advice is a term the FCA uses to refer to something that is advice rather than just information, but which is not regulated. Regulated debt advice/counselling relates to a person's particular debts. Advice that does not relate to particular debts is likely to be generic advice rather than debt advice/counselling (e.g. the statement that repayment of utility debt arrears are normally a priority debt is generic advice).

As noted above in CP 13/10, (page 379), the FCA outline 17 questions to show what is and is not debt counselling. This is well worth reading in order to get a clear understanding of debt advice/counselling and information (and could be used as the basis of a test for staff! – it will be important to show that members take steps to train staff appropriately in areas such as this and that adequate records of training/attainment are kept²).

Working with Lead Generators

Section 8.9 of CONC includes rules and guidance for firms on their responsibilities in dealing with lead generators. A lead generator is defined as a firm which does not provide specific or particular debt advice/counselling and therefore does not require to be authorised or an appointed representative.

The FCA Principles for Businesses (especially PRIN 6 and PRIN 7) apply to the actions of a firm dealing with a customer referred to them by a lead generator. Where a firm takes a lead from a firm and knows, or ought to know, that the lead generator is using misleading information, advice or actions to obtain a customer's personal data this is a breach by the firm of the FCA Principles 6 & 7. If the FCA takes action, it will do so against the authorised firm.

The FCA state that a firm must take reasonable steps before accepting leads for debt counselling or adjusting to ensure:

² *The DRF will be issuing a guidance note on training and evidence. The DRF is also in the process of updating the CertDR syllabus to ensure FCA principles and rules are dealt with*

1. That a lead generator's advice, website, advertising and commercial practices comply with all applicable legal requirements e.g. Unfair Trading Regulations 2008
2. That the lead generator is registered with the Information Commissioner's Office (ICO) and
3. The lead generator has processes in place to ensure compliance with the Data Protection Act 1988 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR)

In general terms firms accepting leads are required to undertake less rigorous scrutiny of lead generation where the lead generator only supplies leads to the firm on a single or occasional basis. In any case, a firm should check that:

- A lead introducer is appropriately registered with ICO
- Check the lead generator's PECR process documentation

The FCA have set out 14 key Rules and some guidance for authorised firms when dealing with lead generation firms which is available in full from [page 153 of the appendices to FCA CP13/10](#). Failure to comply with these rules will lead to the FCA taking action against any firm found to be in breach.

Members are urged to read the appendices above closely for themselves. However, in addition to the above the areas principally covered include taking reasonable steps ³to ensure that the lead introducer:

- Is, if not authorised or an appointed representative, NOT providing specific debt advice or claiming or implying that it does
- Is compliant with all relevant legislation
- Makes it clear to customers what the real nature of its services is
- Makes it clear to customers that personal data will be passed on to the authorised firm and makes clear any financial relationship between the introducer and the firm
- Does not falsely claim to represent a charity, not-for-profit body or governmental organisation
- Has the customer's consent for any electronic communication with the customer, does not use a dialler system to make calls to a customer without consent and enables customers easily to cancel these consents.

³ Reasonable steps could include regular compliance visits, routine examination of a lead introducer's websites, marketing, advertising and promotional material and client and contractual information and compliance interviews with clients and prospects passed by a particular introducer