





The content

Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

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Dealing with harassment

Many creditors harass debtors. Much of this goes unreported and unchallenged, and is expected by many clients. Section 40 of the Administration of Justice Act 1970 defines harassment as trying to coerce a person to pay a contract debt by making demands for payment that are calculated to subject a person to 'alarm, distress or humiliation, because of their frequency or publicity or manner'.

Harassment can take place in writing or orally. It can include using obviously marked vehicles, calling repeatedly at antisocial hours, or visiting neighbours or workplaces. Harassment occurs if a debt collector purports to be enquiring about a person, but explains to neighbours why the enquiries are necessary. Harassment may also include posting lists of debtors in public. It includes abusive or threatening behaviour and all acts of violence. Any false representation that a type of non-payment is a criminal offence or that a person is a court official or other publicly sanctioned debt collector is also regarded as harassment.

Harassment in breach of s40 AJA 1970 is a criminal offence but could also give rise to civil action under the provisions of the Protection from Harassment Act 1997. ¹

Because much debt collection activity takes place verbally over the phone, at the client's home and sometimes at their place of work, you should always ask how demands were made and exactly what was said, and check all written communication for evidence of inappropriate behaviour.

It is important to take urgent action to protect the client from further contact. Send a letter of complaint immediately, outlining the facts as understood and warning the collector and creditor that, if not resolved to the client's satisfaction, the complaint will be taken to the next level. In cases of violence or extreme harassment, consider informing the police and/or your local trading standards department or, if a loan shark is involved, your national Illegal Moneylending Unit (see gov.uk/report-loan-shark) as soon as possible.

Note: the complaint letter should be objective and factual, and not personalised (unless the complaint is about the actions of an identified individual).

Next, advise the client to have no further contact with the collector or creditor until the matter has been clarified. This may involve politely, but firmly, refusing them entry to property or not answering the telephone. You should advise clients that, if they have expressed a wish to the creditor or collector not to be telephoned and only want to be contacted by letter, this wish should be respected (for example, CONC 7.9.4R in the *Consumer Credit Sourcebook* (see below) requires creditors to pay due regard to the reasonable requests of clients as to when, where and how they may be contacted). Advise the client to keep a diary recording details of any further attempted collection action. If possible, take practical steps to ensure that the client's friends, neighbours or relatives know about serious harassment and are able to provide a safe haven or support to them. Some agencies give clients a sheet of their letterhead, and advise them to show this to any

collectors or creditors who visit and tell them to contact the agency.

1 As in *Roberts v Bank of Scotland* [2013] EWCA Civ 882

The *Consumer Credit Sourcebook*

Chapter (or Section) 7 of the *Consumer Credit Sourcebook* (usually referred to by the abbreviation CONC and which is part of the *FCA Handbook*) applies to creditors or external debt collectors taking steps to obtain payment of a debt due under a credit agreement. It covers:

- clear, effective and appropriate arrears policies and procedures for dealing with clients who fall into arrears, including for the fair and appropriate treatment of clients who are particularly vulnerable (CONC 7.2); ¹
- the treatment of clients in default or arrears, particularly the requirement to treat clients fairly (CONC 7.3);
- the requirement to provide clients with information about the amount of any arrears and the outstanding balance (CONC 7.4);
- pursuing and recovering repayments (CONC 7.5);
- exercising a continuous payment authority – ie, a mandate given by the client to, for instance, a lender, allowing it to take a series of payments from a debit or credit card without seeking express authorisation for every payment (see here) (CONC 7.6);
- applying interest or charges (CONC 7.7);
- contact with clients (CONC 7.9);
- the treatment of clients with mental capacity limitations (CONC 7.10);
- misrepresenting the authority or the legal position relating to the debt or the debt recovery process (CONC 7.11);
- creditors' responsibilities in relation to debt (CONC 7.12);
- data accuracy (CONC 7.13);
- settlements and disputed debts (CONC 7.14);
- statute-barred debts – ie, those that are too old to be recovered through the courts (CONC 7.15).

Specifically, the guidance states the following.

- If a creditor informs a client that it has decided not to pursue the debt, it must make them

aware that the debt may still be sold by the creditor and the debt purchaser may decide to pursue the debt. **Note:** if the creditor has accepted a payment in full and final settlement of a debt, the creditor must formally and clearly confirm this (CONC 7.4.2R and 7.14.14R).

- A creditor must investigate if a debt is disputed on valid grounds or what may be valid grounds (eg, if the client is not the debtor, the debt does not exist or the amount being pursued is incorrect), and must provide information on the result of such investigations (CONC 7.14.3R and 7.14.5R).
- Creditors must not require someone to supply information to prove they are not the debtor in question (CONC 7.14.4R).
- Creditors must suspend debt collection activity if a client disputes the debt on valid grounds, or what may be valid grounds (CONC 7.14.1R).
- A creditor should not make undue, excessive or otherwise inappropriate use of statutory demands when seeking to recover a debt from a client (CONC 7.3.15G).
- Creditors must treat clients in default or in arrears difficulties with forbearance and due consideration (CONC 7.3.4R).
- If a client is in default or in arrears difficulties, a creditor must inform them that free and impartial debt advice is available from the free-to-client debt advice sector and refer the client to an agency. It appears that it is sufficient for a creditor to signpost a client to a debt advice agency or to the Money Advice Service by providing its name and contact details to the client (CONC 7.3.7AG).
- Creditors must not pressurise clients to pay a debt in a single lump sum or more than they can reasonably afford and must allow alternative, affordable repayment amounts if a reasonable offer is made (CONC 7.3.8G and 7.3.10R). Putting clients under pressure to draw a lump sum from a pension to pay a debt is likely to breach these requirements (CONC 7.3.10AG).
- Creditors must suspend recovery of a debt from a client for a reasonable period (ie, 30 days) if a debt adviser is assisting them to agree a repayment plan and should consider extending this for a further 30 days if there is evidence of reasonable progress (CONC 7.3.11R and 7.3.12G). When determining a reasonable period, creditors may take into account any period the debt was subject to a breathing space moratorium (CONC 7.3.12) (see here).
- Creditors must suspend recovery of a debt from a client if notification has been given and it is reasonably believed that they lack the mental capacity to make decisions about their debt problems, unless or until a reasonable period has been allowed for relevant evidence to be provided (CONC 7.10.1R and 7.10.2G).
- Creditors must take reasonable steps to ensure that customer data is accurate and that accurate and adequate data is passed on to third parties, such as debt collectors, debt

purchasers and credit reference agencies, to avoid cases of 'mistaken identity' (ie, the wrong person being pursued for payment of a debt) and to ensure that clients are pursued for the correct amount of any debt (CONC 7.13).

- For statute-barred debts (see here), CONC 7.15 acknowledges that, although the debt still legally exists, a creditor must not:
 - pursue the debt if the client has heard nothing from the creditor during the relevant limitation period (this does not apply if the creditor has been in regular contact with the client before the debt became statute-barred);
 - mislead clients about their rights and obligations – eg, by falsely claiming that the debt is still recoverable through the courts;
 - continue to press for payment after a client has stated that they will not be paying a debt because it is statute-barred.

The detailed rules and guidance set out above are underpinned by a set of principles known as the Principles of Business (PRIN), which are set out in the *FCA Handbook*. Principle 6, which requires a creditor to 'pay due regard to its customers' interests and ensure they are treated fairly' and Principle 7, which requires a creditor to 'pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading', are of particular significance when creditors are dealing with clients in financial difficulties and arrears. Principle 6 requires a proper investigation of the client's personal circumstances, including what they can truly afford to repay and whether the client is a vulnerable person, so that any payment arrangements agreed are appropriate. In January 2021, the Financial Conduct Authority (FCA) reminded debt purchasers and debt collectors that the requirement to treat customers fairly applied equally to them as to the original creditor.

For many years, the FCA has been consulting on a new Principle 12 known as the 'consumer duty' (a firm must act to deliver good outcomes for retail customers) and published the final rules together with guidance in July 2022 as PRIN 2A of the *FCA Handbook*. Firms have been required to apply the duty to new and existing products and services (including existing as well as new cases of firms providing debt advice: free-to-client as well as fee-charging) from 31 July 2023. If the consumer duty applies, Principle 12 replaces Principles 6 and 7 above as it sets a higher and more exacting standard of conduct than that which those principles would otherwise have required. The rules can be viewed at fca.org.uk/publication/policy/ps22-9.pdf and the non-*Handbook* guidance at fca.org.uk/publication/finalised-guidance/fg22-5.pdf. The FCA has also published a 'Dear CEO' letter on implementing the duty in the debt advice sector, which you can view at fca.org.uk/publication/correspondence/consumer-duty-letter-debt-advice.pdf.² The new duty is underpinned by three rules setting out the key behaviours required by the duty (described by the FCA as the 'cross-cutting rules': see PRIN 2A.1.10G) which require firms to:

- act in good faith towards retail customers; *and*
- avoid causing foreseeable harm to retail customers; *and*
- enable and support retail customers to pursue their financial objectives.

The duty requires firms to act to deliver good outcomes for their retail customers (clients in the case of the debt advice sector). Firms should consider the diverse needs of their customers (clients), including those with characteristics of vulnerability. The new rules and guidance are intended to ensure the achievement of the following four specific outcomes:

- products and services are designed to meet the needs, characteristics and objectives of specified target markets; *and*
- products and services provide fair value with a reasonable relationship between the price customers pay and the benefit they receive; *and*
- firms communicate in a way that supports customer understanding and equips them to make effective, timely and properly informed decisions; *and*
- firms provide support that meets customers' needs throughout the life of the product or service.

Firms must be able to monitor the outcomes their customers are experiencing which must, in turn, enable them to identify when customers, or groups of customers, are experiencing poor outcomes. When that is the case, they must take appropriate action to remedy the situation. ³

The FCA has written to motor finance providers ⁴ and retail finance providers ⁵ about the implementation of the consumer duty which came into force (i) on 31 July 2023 for new and existing products and services - ie, those that are open for sale and renewal and (ii) on 31 July 2024 for closed products and services - ie, those where there are both existing customers who took out a contract before 31 July 2023 and the product or service has not been marketed or distributed (including by renewal) on or after 31 July 2024 (see here). Both letters refer to the FCA's ongoing concerns about inadequate affordability assessments and treatment of customers in arrears. Given the impact of coronavirus and the rising cost of living, the FCA makes clear it expects creditors to provide clients in financial difficulty with appropriate tailored forbearance that is in their interests and takes account of their individual circumstances. Annex 2 of each letter sets out the FCA's latest view of actions which could potentially lead to customer harm in the context of the consumer duty. Issues discussed include: affordability, forbearance and complaints handling. 'Dear CEO' letters have also been published by the FCA in relation to implementation of the duty in relation to closed services that you can view at www.fca.org.uk/publication/correspondence/dear-ceo-letter-implementing-consumer-duty-closed-products-services-all-other-firms.pdf. Annex 1 is particularly useful as it contains a definition and overview of the rules on closed products and services.

The duty does not have retrospective effect and so actions or omissions occurring before the duty came into effect continue to be assessed in line with the rules in force at the relevant time. While no right of action through the courts for any breach of the consumer duty was incorporated in the final rules, creditors are still accountable through the Financial Ombudsman Service. ⁶

Note: from 29 July 2022, any creditor applying for FCA authorisation (or to vary any existing permissions) needed to demonstrate they could meet the relevant requirements of the consumer duty on an ongoing basis.

In February 2021, the FCA published its finalised guidance on the fair treatment of vulnerable customers with the stated aim of ensuring that vulnerable customers are treated fairly and that they experience the same outcomes as other customers. The FCA defines '**vulnerable customers**' as: 'customers who, due to their personal circumstances, are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care'. The guidance sets out six areas the FCA believes creditors should focus on.

- Understanding the nature and scale of their customers' potential vulnerabilities and the impact of vulnerability on their needs.
- Training staff to identify phrases and behaviours that suggest customer vulnerability and then direct them to appropriate sources of assistance.
- Considering vulnerable customers at all stages of product and service design.
- Providing customer service processes that enable vulnerable customers to disclose their needs and the creditor to respond flexibly.
- Ensuring communications are understandable by all consumers, taking into account the needs of vulnerable customers – eg, choice of communication channels.
- Monitoring and evaluating whether the needs of vulnerable customers have been met.

The guidance points out the relevance of the Equality Act 2010 and that a breach of the Act is likely to be a breach of FCA rules and principles – eg, the requirement to make reasonable adjustments for a client with a disability. The FCA says it intends to review the impact of this guidance within two to three years. The guidance can be found at [fca.org.uk/publication/finalised-guidance/fg21-1.pdf](https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf). Following a seminar held by the FCA in May 2021 to help creditors understand their role in treating vulnerable customers fairly, the FCA published a set of frequently asked questions, which can be found at [fca.org.uk/publication/documents/guidance-fair-treatment-vulnerable-customers-faqs.pdf](https://www.fca.org.uk/publication/documents/guidance-fair-treatment-vulnerable-customers-faqs.pdf).

Breaches of the *FCA Handbook* should first be raised with the creditor and debt collector concerned. If the matter is not resolved, the client should use the complaints procedure to escalate the matter to the Financial Ombudsman Service. ⁷ Also raise the issue with the appropriate trade body (eg, the Finance and Leasing Association or the regulator – eg, the FCA).

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- 1 The FCA guidance on the fair treatment of vulnerable customers is available at [fca.org.uk/publications/guidance-consultations/gc20-3-guidance-firms-fair-treatment-vulnerable-customers](https://www.fca.org.uk/publications/guidance-consultations/gc20-3-guidance-firms-fair-treatment-vulnerable-customers)
 - 2 For further information, see A Wright, 'Consumer Duty Update: implementation of the consumer duty in debt advice', *Quarterly Account* 68, IMA
 - 3 For further information, see G O'Malley, 'FCA Consumer Duty - what it is and how advisers can use it', *Adviser* online, 22 January 2024
 - 4 See tinyurl.com/252wdz9n
 - 5 See [fca.org.uk/publication/correspondence/consumer-duty-portfolio-letter-retail-finance-providers.pdf](https://www.fca.org.uk/publication/correspondence/consumer-duty-portfolio-letter-retail-finance-providers.pdf)
 - 6 S Williams, 'The Consumer Duty - how can debt advisers use it in complaints?', *Quarterly Account* 71, IMA
 - 7 *Ombudsman News* 99, 2012 contains a number of case studies involving debt collection, which are covered in *Arian* 35 caselaw update and *Adviser* 150 abstracts. See also *Ombudsman News* 114, 2013 and *Arian* 47 caselaw update. See also V Seetal, 'Debt collection complaints and the Financial Ombudsman Service', *Quarterly Account* 54, IMA.

Codes of practice

Many creditors have their own codes of practice. For example, all gas and electricity suppliers must have a code of practice on dealing with customers in financial difficulty. Other creditors subscribe to trade associations, which have codes of practice with which members should comply – eg, the *Finance and Leasing Association Lending Code*, the *Credit Services Association Code of Practice* and the Lending Standards Board's *The Standards of Lending Practice*. Some regulators (eg, the FCA, Ofwat and Ofgem) issue guidelines on how to deal with customers in debt. There is also guidance for enforcement agents (bailiffs) in *Taking Control of Goods: national standards*.¹

All these codes set high standards, which creditors and collectors are expected to meet in their dealings with clients. *The Standards of Lending Practice* also requires subscribers to ensure that when they sell a debt, the purchaser agrees to comply with its guidance on handling financial difficulties. The *Finance and Leasing Association Lending Code* contains equivalent provisions. Although creditors and collectors often fall short of the standards set in the relevant code of practice, they are voluntary and cannot be directly enforced in the event of non-compliance. The only remedy is a complaint, which in some cases can be referred to an independent Ombudsman

(see here).

This *Handbook* refers to codes of practice when relevant. It is often in a client's best interests to point out to a creditor or collector any non-compliance with a code of practice and request that it be complied with. In the case of collectors (and private enforcement agents), it is also worth copying in the creditor. This does not mean that a complaint should be made in every case. The aim of a complaint should be to achieve a better outcome for the client than currently appears likely and so, if a complaint is likely to impede rather than promote negotiation, you should discuss this with the client and consider deferring it.

1 Ministry of Justice, *Taking Control of Goods: national standards*, updated April 2014. Although not legally binding, any relevant paragraphs are useful industry guidance which can be referred to in any complaint. See also *Ali and Aslam v Channel 5 Broadcasting* [2018] EWHC 298 (Ch) at para 54.

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Please be aware that welfare rights law and guidance change frequently. This page was printed on Friday, October 17, 2025 and may go out of date.