

Chapter 7

Arrears, default and recovery (including repossessions)



7.13 Data accuracy and outsourced activities

Data accuracy

7.13.1 **G** The obtaining, recording, holding and passing on of information about individuals for the purposes of tracing a *customer* and/or recovering a debt due under a *credit agreement* or a *consumer hire agreement* or a *P2P agreement* will involve the processing of personal data. Accordingly, *firms* processing such data are data controllers or data processors and are obliged to comply with *data protection legislation* and, in particular, to adhere to the data protection principles.

[Note: paragraph 3.16 of DCG]

7.13.2 **R** A *firm* must take reasonable steps to ensure that it maintains accurate and adequate data (including in respect of debt and repayment history) so as to avoid the risk that:

- (1) an *individual* who is not the true *borrower* or *hirer* is pursued for the repayment of a debt; and
- (2) the *borrower* or *hirer* is pursued for an incorrect amount.

[Note: paragraphs 3.19 of DCG and 7.11 (box) of ILG]

7.13.3 **R** A *firm* must endeavour to ensure that the information it passes on to its agent or to a *debt collector* or to a tracing agent (a *person* that carries on the activity in article 54 of the Exemption Order), whether for the *firm's* or another *person's* business, or to any other *person* involved in recovering the debt or, where appropriate, to a *credit reference agency* is accurate and adequate so as to facilitate the tracing and identification of the true *borrower* or *hirer*.

[Note: paragraphs 3.20 of DCG and 7.11 (box) ILG]

7.13.4 **R** Before pursuing a *customer* for the repayment of a debt, a *firm* must take reasonable steps to verify the accuracy and adequacy of the available data so as to ensure that the true *customer* is pursued for the debt and that they are pursued for the correct amount.

[Note: paragraphs 3.7e and 3.23a of DCG]

7.13.5 **G** A *firm* should ensure (subject to any legal requirements) that adequate and accurate information it holds about a *customer* in relation to a debt is made available to *persons* involved on its behalf in the debt recovery process. Information relating to the *customer* which should be made available to agents or employees includes, for example:

- (1) being in financial difficulties;
- (2) being particularly vulnerable;
- (3) disputing the debt;
- (4) a repayment plan or forbearance being in place;
- (5) having a representative acting on the *customer's* behalf.

[Note: paragraph 3.23b (box) of DCG]

7.13.6 **G** A *firm* should not impose limitations on the number or the extent of reasonable applications that can be made to it for documents or other relevant information pertaining to a *customer* in respect of which it is, or has been, the *lender* or *owner*, by a *firm* seeking such information to facilitate its pursuance of the relevant debt.

[Note: paragraph 3.23i of DCG]

7.13.7 **R** Where a *firm* has established that an *individual* being pursued for a debt is not the true *borrower* or *hirer* under the *credit agreement*, *regulated credit agreement*, *consumer hire agreement* or *regulated consumer hire agreement* or that the debt has been paid, the *firm* must update its records and the data supplied to the *credit reference agencies* (where applicable).

[Note: paragraph 3.23f of DCG]

Outsourcing.....

7.13.8 **G** ■ SYSC 8.1 includes *rules* and *guidance* on outsourcing with which *firms* must or should comply as appropriate.

7.13.9 **G** A *firm* seeking to instruct a third party to pursue the recovery of debts or to trace *customers* on its behalf should exercise due care in selecting the third party.

[Note: paragraph 2.5 of DCG]

7.13.10 **G** A *firm* should take reasonable steps to seek to ensure that, where it has engaged a third party to recover debts on its behalf, the *customer* is not subject to multiple approaches by different *persons*, resulting in repetitive or frequent contact with the *customer* by different parties.

[Note: paragraph 3.7c of DCG]

- 7.13.11 **G** Where a *firm* has engaged a third party to recover debts or to trace *customers* on its behalf, it should properly investigate complaints about the third party.
- [Note: paragraph 2.5 of DCG]
- 7.13.12 **G** ■ CONC 1.2.2 R requires a *firm* to ensure its employees and agents comply with CONC and that it takes reasonable steps to ensure other *persons* who act on its behalf do so.
- 7.13.13 **R** A *firm* must ensure that a third party engaged by it, where required, has the appropriate *Part 4A permission* to engage in the *regulated activities* undertaken in the course of the third party's business.
- [Note: paragraph 2.6 of DCG]