

CONSUMER CREDIT (DEBT PACKAGER REMUNERATION FROM DEBT SOLUTION PROVIDERS) INSTRUMENT 2023

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (General rule-making power);
 - (2) section 137D (General rules: product intervention);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 2 June 2023.

Amendments to the Handbook

- D. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex A to this instrument.

Amendments to the material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Consumer Credit (Debt Packager Remuneration from Debt Solution Providers) Instrument 2023.

By order of the Board
25 May 2023

Annex A

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

8 Debt advice

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8.3 Pre contract information and advice requirements

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8.3.8 G ...

Prohibition on debt packager remuneration from debt solution providers

Scope

8.3.9 R (1) CONC 8.3.11R to CONC 8.3.15R:

(a) apply to a firm with respect to debt counselling where the firm does not itself provide debt solutions; and

(b) do not apply to a firm that is a not-for-profit debt advice body.

(2) A firm is treated as not itself providing debt solutions for the purposes of CONC 8.3.9R(1)(a) where the firm:

(a) provides debt solutions on a single or occasional basis; and/or

(b) receives only an insignificant amount of its total annual revenue from providing debt solutions.

Context, purpose and anti-avoidance

8.3.10 G (1) Firms are reminded that when referring customers to debt solution providers, or carrying on related services, a firm must comply with its obligations under:

(a) Principle 12 (Consumer Duty) to act to deliver good outcomes for retail customers and/or Principle 6 (Customers' interests) to pay due regard to the interests of its customers and treat them fairly; and

(b) CONC 8.3.2R(1) to ensure that all advice given and action taken by the firm, its agent or its appointed representative:

- (i) has regard to the best interests of the *customer*;
 - (ii) is appropriate to the individual circumstances of the *customer*; and
 - (iii) is based on a sufficiently full assessment of the financial circumstances of the *customer*.
- (2) The purpose of the prohibition in CONC 8.3.11R is to remove the conflict of interest between a debt packager's obligations under CONC, including those referred to in CONC 8.3.10G(1), and the financial incentive to act in a way which generates revenue in the form of referral fees from *debt solution* providers.
- (3) The effect of CONC 8.3.9R(2) is that *firms* will not be able to avoid the prohibition in CONC 8.3.11R by starting to provide a small number of *debt solutions* for that purpose.
- (4) For the purposes of CONC 8.3.9R(2)(b), the amount of total annual revenue received from providing *debt solutions* is unlikely to be considered significant if an undue risk of non-compliant debt advice arising out of a conflict of interest of the kind described in CONC 8.3.10G(2) continues to exist.
- (5) For the purposes of CONC 8.3.10G(1)(a), during the period to which CONC TP 8(6) to (7) applies, the FCA considers it unlikely that an increase in either the referral of *customers* to *debt solution* providers or carrying on related services, would be in accordance with Principle 6 or Principle 12.

Prohibition

- 8.3.11 R (1) A *firm* must not (and must take all reasonable steps to ensure that none of its *associates* or its *appointed representatives*):
- (a) enter into an agreement to receive;
 - (b) solicit or accept; or
 - (c) seek to exercise, enforce or rely on rights or obligations under an agreement to receive,
- any commission, fee or any other financial consideration, directly or indirectly, from a *debt solution* provider in connection with the *firm* referring *customers* to a *debt solution* provider, or any other related services, except as provided in CONC 8.3.14R.
- (2) CONC 8.3.11(1)(b) and (c) do not apply where the *firm* has an accrued contractual right to payment for the referral, or related services, in relation to a *customer* prior to the coming into force of CONC 8.3.11R(1).

- 8.3.12 R 'Related service(s)' for the purposes of CONC 8.3.9R to CONC 8.3.11R includes:
- (1) recommending a *debt solution* provider;
 - (2) providing *debt counselling* services to *customers* prior to those *customers* being referred to a *debt solution* provider or entering into a *debt solution*; and
 - (3) providing *debt counselling* services to *customers* who have been referred to the *firm* by a *debt solution* provider.
- 8.3.13 R 'Debt solution provider(s)' for the purposes of CONC 8.3.10G to CONC 8.3.12R includes such providers' *associates* and *appointed representatives*.
- 8.3.14 R CONC 8.3.11R does not apply to payments made:
- (1) pursuant to an enactment;
 - (2) in relation to the administration by a 'money adviser' approved under The Debt Arrangement Scheme (Scotland) Regulations 2011 of a *customer's* application for a Debt Arrangement Scheme under those Regulations; or
 - (3) by a person employed as an officer of:
 - (a) (in relation to England and Wales) the Insolvency Service;
 - (b) (in relation to Scotland) the Accountant in Bankruptcy; or
 - (c) (in relation to Northern Ireland) the Insolvency Service.

Record keeping

- 8.3.15 G *Firms* are reminded of their obligations in SYSC 9.1.1R to keep orderly records, which must be sufficient to enable the *FCA* to monitor the *firm's* compliance with the requirements of the *regulatory system*.

Application of the prohibition to appointed representatives

- 8.3.16 R *Principals* which have an *appointed representative* to whom CONC 8.3.9R(1) would apply if the *appointed representative* were an *authorised person* must take all reasonable steps to ensure that such an *appointed representative* complies with CONC 8.3.11R as if the references in that rule to '*firm*' applied to such an *appointed representative*.
- 8.3.17 G The purpose of CONC 8.3.16R is to prevent a debt packager *firm* from becoming an *appointed representative* in order to avoid CONC 8.3.11R applying to it and continuing to be conflicted by the financial incentive to act in a way which generates revenue from *debt solution* providers.

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TP 8 Other transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
(5)	...				
(6)	<u>CONC 8.3.11R</u>	<u>R</u>	<p>(a) <u>A firm which is carrying out activity described in CONC 8.3.9R immediately before 2 June 2023 may comply with CONC as if CONC 8.3.11R had not been made, until (but not including) 3 October 2023.</u></p> <p>(b) <u>CONC TP 8(6)(a) does not affect the application of CONC 8.3.16R to a firm in respect of an appointed representative in circumstances where the appointed representative was appointed after 1 June 2023 or did not carry out activity described in CONC 8.3.9R immediately before 2 June 2023.</u></p>	<u>2 June 2023 until (but not including) 3 October 2023</u>	<u>2 June 2023</u>
(7)	<u>CONC 8.3.11R</u>	<u>G</u>	<u>The effect of CONC TP 8(6) is to provide a transitional period to all existing debt packager firms and their existing appointed representatives, where</u>	<u>2 June 2023 until (but not including) 3 October 2023</u>	<u>2 June 2023</u>

			<p><u>such firms or appointed representatives are carrying on debt packager business immediately before the prohibition in CONC 8.3.11R comes into force.</u></p>		
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Annex B

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

2 Authorisation and regulated activities

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2.9 Regulated activities: exclusions applicable in certain circumstances

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Insolvency practitioners

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- 2.9.26 G These exclusions apply to a *person* acting as an insolvency practitioner. The term "insolvency practitioner" is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989. The exclusions relating to *debt adjusting*, *debt counselling* and *providing credit information services* also apply to any activity carried on by a *person* acting in reasonable contemplation of that *person's* appointment as an insolvency practitioner. In relation to *debt counselling*, insolvency practitioners may find PERG 17.7 helpful, including examples 12, 13 and 13A.

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17 Consumer credit debt counselling

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17.7 Examples

Q7.1 Please give me some examples of what is and is not debt counselling

Please see the following table. All the examples assume that the advice or information relates to debts under a *credit agreement* or a *consumer hire agreement* or to a group of debts that include such debts.

Examples of what is and is not <i>debt counselling</i>	
Example	Explanation
...	
(13) A <i>person</i> recommends that a debtor obtains advice from a particular <i>debt</i>	Taken on its own it is not <i>debt counselling</i> because the adviser is

	<p><i>counselling firm</i>, ABC Debt Management.</p>	<p>advising the debtor to obtain advice from another adviser.</p> <p>However, if ABC Debt Management only offers one debt solution (e.g. a debt management plan), the referral could constitute a recommendation intended implicitly to steer the debtor in the direction of that particular debt solution and, therefore, could be advice (in which case it would be <i>debt counselling</i>).</p> <p>Consequently, whether or not <i>debt counselling</i> is involved will depend on the individual circumstances in each case and is likely to involve a consideration of the process as a whole.</p>
	<p><u>(13A) A person recommends that a debtor obtains advice from a particular insolvency practitioner or their firm.</u></p>	<p><u>Taken on its own it is not <i>debt counselling</i> because the adviser is advising the debtor to obtain advice from another adviser.</u></p> <p><u>However, where the insolvency practitioner or their firm only offers advice in relation to a particular <i>debt solution</i> (e.g. an individual voluntary arrangement or a protected trust deed), the referral could constitute a recommendation intended to implicitly steer the debtor in the direction of that particular <i>debt solution</i> and, therefore, could be advice (in which case it would be <i>debt counselling</i>).</u></p> <p><u>Consequently, whether or not <i>debt counselling</i> is involved will depend on the individual circumstances in each case and is likely to involve a consideration of the process as a whole.</u></p>
	<p>...</p>	