Consultation Response

Consumer credit – proposed changes to our rules and guidance

StepChange Debt Charity response to the Financial Conduct Authority

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Introduction

StepChange Debt Charity is one of the UK's largest not for profit debt advice and solutions providers. In 2014 we were contacted by almost 600,000 individuals in financial difficulty. Our clients, and the wider indebted population of the UK, are a key demographic looking to the FCA for protection through effective regulation of consumer credit markets.

We agree with the majority of proposals in the consultation document. However, we believe there are some areas where the FCA could go further to address bad practice. There are also some proposals about which we would like the FCA to clarify details.

The below consultation response is based on evidence provided to the Charity by our clients.

Q1: Do you agree that the rules in PS14/18 should be retained? If not, please explain what changes you would propose and why.

We agree the rules in PS14/18 should be retained. However, we believe the FCA should bring in additional protections in this area.

1. **Fees and payment details**

While we support the FCA's move to ensure that fees will not be taken by brokers from a customer's payment account without the explicit authorisation of the customer, we believe this may still be exploited by some firms. Our clients have suffered significant detriment due to the actions of credit brokers. One of the key problems experienced by consumers working with credit broking firms is fees being taken but no service provided. While authorisation remains oral, it will be easy for some firms to claim it has occurred, and to take payment, even when the customer has not accepted. In these circumstances there is also a limited paper trail for the FCA to use to protect consumers, or for consumers to use as evidence when seeking redress.

Case Study[1] We recently advised a client who had applied for a loan via a credit broker, but then told the broker shortly afterwards that he didn't want to proceed. He was told by the broker that no admin fees would be charged. However, it charged him £67 and passed his details to many other providers, who have also been deducting fees from his account.

[1] All Case Studies of StepChange Debt Charity clients

FCA rules on distance marketing provide some protection to consumers, distressed or otherwise, tempted to enter a contract over the telephone. But distance sales rules in some international jurisdictions are much tighter. In Norway, under the 'Cancellation Act', if a contract is concluded as a result of the trader making an unsolicited offer in a telephone call the consumer is not bound until the offer has been accepted in writing. Similarly, in Germany contracts on lottery games that are agreed upon on the telephone need written confirmation[2].

The UK could be brought up to a higher consumer protection standard by regulations mandating that credit broking contracts must be signed before the broker is authorised to a) commence a search for a loan, and b) take any form of payment from an individual.

2. **Transparency**

We are concerned that credit brokers can share customer contact details with multiple partners for the purpose of unsolicited marketing. Although PS14/18 requires brokers to divulge the name of the lender it has agreed a loan with, it does not require brokers to divulge the panel of lenders with whom it shares information. It is then unclear to consumers who has their details and can lead to them being bombarded with nuisance telephone calls.

Therefore, we believe consent should be 'bounded' so that consumers know when they are consenting to sharing personal data via credit brokers, whom they are sharing data with and what will happen to that data once shared.

The FCA should therefore extend the decision of PS14/18 to require credit brokers when engaged in financial promotions to list each organisation it intends to share data with, not just the name of the identified lender, so consumers can then give or withhold individual consent to each third party.

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The FCA should therefore require brokers when engaged in financial promotions to list each organisation they intend to share data with, not just the name of the identified lender (CONC 3.3.2R), so consumers can then give or withhold individual consent to each third party.

3. **Information notices**

We are concerned that the new rules on information notices do not apply to a) firms that operate on a commission basis, and b) firms that only take payment details in order to pass them on to lender.

[2] Claire Milne (2015), *Combatting Nuisance Calls and Texts*

On the former, we believe that allowing firms that operate on a commission basis to avoid providing information notices will incentivise more firms to operate in this way. As we discuss below, we do not believe the commission model is an appropriate way for credit brokers to be remunerated.

On the latter, our worry is that removing the requirement on firms that only take payment details to provide an information notice poses dangers for consumers in the event of fraudulent activity. Without a "paper trail" for the consumer, how can they prove misuse of payment details if the credit broking firm with these details has acted in a fraudulent manner?

Q3: Do you have any comments on our proposed minor changes to the CONC rules on credit brokers?

We welcome the decision to factor credit broking fees into APRs. However, we have some questions about how this will work in practice.

- How does the FCA intend to factor into APRs the cost of premium rate telephone calls when these are employed by credit brokers?
- How will lenders and brokers make clear to the consumer which part of the APR is the cost of the loan and which part encompasses the broker fees?

Q4: Do you have any views on remuneration processes for brokers, or on the specific issues raised in this chapter?

We question whether the commission model is an appropriate way for credit brokers to be remunerated. The FCA acknowledged possible problems with commission bias in investment advice in the retail distribution review. We are concerned that commission based charging is likely to cause similar problems with credit broking. Brokers may be incentivised to recommend loans that provide the best commission for them, rather than the best value or most suitable product for consumers. This could mean loans with the highest APR, or a longer term, or a larger loan rather than the one most appropriate for the customer, because it will result in a higher payment for the firm.

Q5: Do you have any comments on our proposed changes to CONC rules in relation to guarantor lending, or suggestions for further changes?

We are pleased that the FCA has decided to address problems in the guarantor lending market. This is a market that has caused significant detriment for our clients and their families.

Case Study

In August 2014 the Charity advised a client with a guarantor loan debt. She told us that the lender has, on multiple occasions, contacted her friends and family stating that they (the friend or family member) are 'guarantors' and therefore need to provide contact details for our client. The guarantor lender has also contacted her friends and family often pretending to be her bank.

Case Study

One of our advisers recently spoke to a client whose guarantor lender has been threatening court action for around two months. It has stated just because the client is working with StepChange Debt Charity this does not mean she can “walk away from her debts”. It has furthermore threatened to apply for an Attachment of Earnings in order to make her employer aware of her debt difficulties.

Later the firm contacted our client to question whether she was spending money on her wedding rather than her debt; it advised that it was aware she was getting married through information from her Facebook account.

Case Study

One client has informed us that shortly following her admission to a Hospital Inpatient Unit, she received a text message advising her that her son had missed a payment to his guarantor lender. The client asked one of her nurses to contact the lender to advise them how unwell she was and whether they could refrain from contacting her for a month. Despite agreeing to this the lender proceeded to send her letters on five occasions over the following two weeks.

However, we believe that the FCA should go further in a couple of places in its new rules

1. **Liability for fees and charges**

There is currently nothing stopping guarantor lending firms from transferring interest and charges from the borrower to the guarantor. This means a guarantor can become liable for a far higher debt than anticipated at the point they agreed to become a guarantor. This could lead to high levels of financial detriment.

We believe the FCA should act to ensure that guarantors do not have a potentially open-ended liability. The FCA might do this by, for example, putting in place a rule that lenders can only seek to recover the original capital from the guarantor when a borrower has defaulted.

Case Study

We advised a client who had guaranteed a loan for his brother. When the brother failed to pay our client was pursued for the debt. This was originally £2,500 but with court fees and interest it had risen to £4,800. Our client offered a settlement of £2,700 but this was refused.

The client has now paid over £2,000 towards debt.

2. **Independent advice**

While we are in favour of the FCA decision to ensure guarantors are protected by a similar level of creditworthiness assessment as borrowers, we believe that the new CONC 5.2.5R (2) should include a reference to independent debt advice. The new rule states that lenders must assess the potential for a guarantor's commitments in respect of the regulated credit agreement to 'adversely impact the guarantor's financial situation.' We are concerned that in situations where a large amount of credit is being discussed, although a creditworthiness assessment assures the lender, the prospective guarantor is still left in a difficult position when trying to decide to act as a guarantor or not. There is a potential danger that people will agree to act as a guarantor as a result of undue influence by the borrower. In such circumstance it would be useful for the guarantor to have the opportunity to speak to an independent adviser to assess their financial position.

3. **Creditworthiness**

We note that in the new rules still there is still a discrepancy between the creditworthiness assessments of borrowers and guarantors. While for the borrower the creditworthiness assessment will have to check 'the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement' (5.2.1R), for the guarantor it will not have to do so. Our concern is that this could leave the guarantor in a difficult position if the lender transfers the liability as an ongoing agreement, with the potential for additional interest, fees and charges. Or that the lender may seek to recover the outstanding debt in as a lump sum or in instalments that are not affordable. Therefore, we believe the FCA should take this opportunity to clarify how it expects lenders to structure payments from the guarantor and how it expects them to assess the potential for detriment with new ongoing agreements. Should 5.2.1R apply to guarantors as well as borrowers?

Q8: Do you have any comments on our proposed changes to other rules for lenders and guidance for firms?

We agree in principle with these proposals. However, we have two questions on the detail of the changes.

First, we are interested to know how the FCA intends to monitor the 'adequacy' of pre-contractual information (CONC 4.2.7G). In 2011, the Consumer Credit Directive brought in new rules regarding standardised pre-contractual information, which have been transferred into CONC. However, there appears to have been no assessment of how consumer receive and understand such standardised pre-contractual information. We believe the FCA should take this opportunity to assess this issue and then decide whether the wording of CONC 4.2.5R needs to be updated to ensure that lenders deliver pre-contractual information and explanations in a way that actually provides effective protection for consumers.

Second, we would like to know how the FCA intends firms to assess a 'borrower's degree of sophistication in credit matters', and how it will monitor this?

Q9: Do you agree with the removal of the exemption from the HCSTC risk warning requirement?

We agree with the removal of the exemption from the HCSTC risk warning requirement.

Q13: Do you have any comments on our proposed changes to other rules and guidance on financial promotions?

We agree with the FCA proposals regarding:

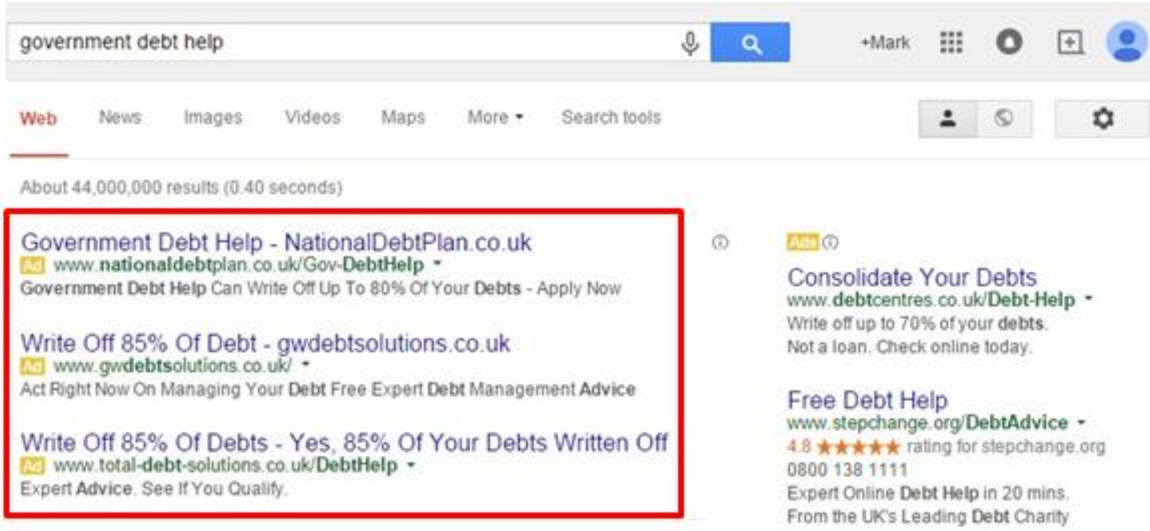
- CONC 2.2.4G
- CONC 3.1.4AG
- CONC 3.3.3R
- CONC 3.5.3R
- CONC 3.5.4G
- CONC 3.5.6G
- CONC 3.6.5G
- CONC 3.6.10R
- CONC 3.10.3G

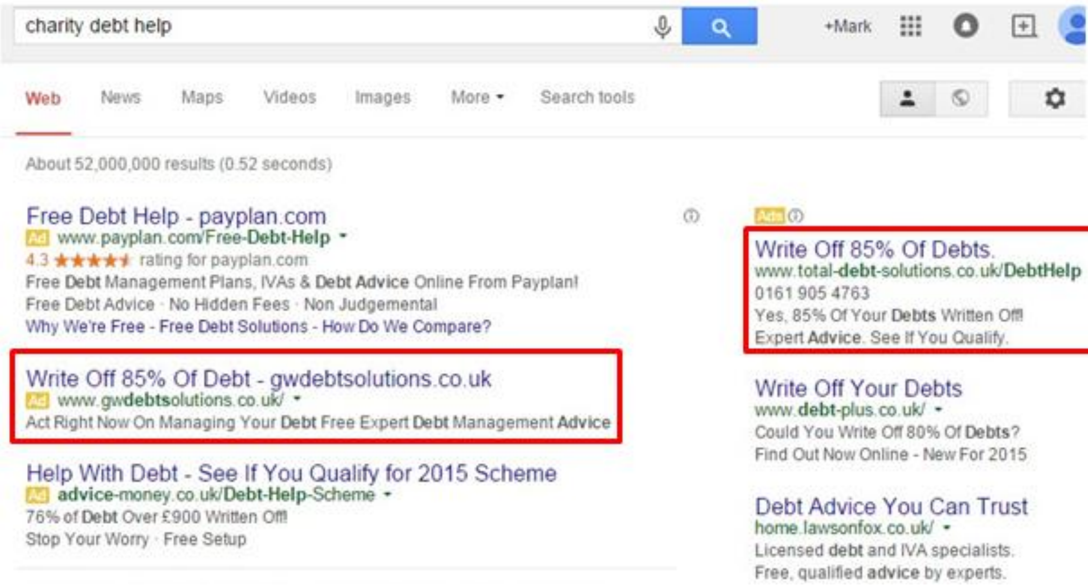
However, we have some issues to raise regarding CONC 3.1.7R, CONC 3.3.2R and CONC 3.34G.

1. **'Pay per click' advertising**

We believe the FCA needs to address the use of pay-per-click (PPC) advertising by fee-charging debt advice companies.

There is currently a problem that fee-charging debt management companies are using pay per click advertising to increase their prominence when individuals search online using terms such as 'government debt advice' or 'charity debt help' (see examples).





This use is an apparent contravention of CONC 3.9.7R (2), but we believe that firms are circumventing this by interpreting 3.1.7 as covering PPC advertising, and therefore PPC as exempt from CONC 3.9 rules. This is certainly does not seem to be in line with the FCA's policy intentions.

The current consultation has moved to clarify that CONC 3.9 does apply to debt counselling and debt adjusting by the inclusion of CONC 3.1.4AG. To prevent fee-charging debt management firms getting around 3.9.7R (2) we think the FCA needs to make a similar clarification to 3.1.7R (2) to say that the provisions in CONC 3 which apply to a financial promotion or communication which falls within 3.1.7R (1) includes 3.9.7R (2).

2. **Guaranteed credit**

Regarding the changes to 3.3.4G: we question why the FCA does not explicitly state that 'an implication that credit is guaranteed or pre-approved or is not subject to any credit checks or other assessment of creditworthiness or affordability' <u>contravenes</u>

3.3.3R rather than 'may contravene' 3.3.3R. It seems clear from the wording of 3.3.3R that such a practice would be in contravention and we would encourage the FCA to make this clear. We would also suggest that the FCA include the guidance of 3.3.4G in Rule 3.3.3R to give it more force.

3. **Unsolicited marketing**

We would also like to take this opportunity to draw the FCA's attention to another issue relating to unsolicited marketing, which comes under its financial promotion rules.

A third (32.4 percent) of StepChange Debt Charity clients we surveyed (individuals in severe financial difficulty) said they had received an unsolicited marketing call (also known as an 'unsolicited real-time promotion') offering them a payday loan. Those receiving calls received an average of 10 calls per week[3]. This has caused significant consumer detriment where people have entered into unsuitable and unaffordable loans as a result. We urge the FCA to address this by strengthening its financial promotion rules on consumer credit products The FCA prohibits the promotion of mortgage products via 'unsolicited real-time promotion' under the Mortgage Conduct of Business rules. Yet, the promotion of high-cost credit such as payday loans and high-risk credit products such a fee-charging debt solutions via unsolicited marketing calls is permitted.

The FCA should move to prohibit "unsolicited real time promotions" of high-risk credit products.

Q14: Do you have any comments on our proposed changes to guidance regarding referrals to debt advice?

It is our understanding that recently there has been a reduction in the number of consumer credit lenders forming commercialised relationships with fee-charging debt advice companies i.e. making referrals in exchange for a fee.

We are concerned that the proposed changes to CONC 7.3.7G may lead to this situation reversing, with commercial debt advice providers offering referring fees, or lenders seeking referral fees. This would not be in the best interest of financially-stricken consumers. Therefore if the FCA decides to go ahead with this change, it should act to ensure that fee based referral relationships do not harm consumers. It will also be important to consider how the changes to 7.3.7G affect rules regarding the prominence of signposting to free advice and the way lenders discuss free advice with indebted customers.

Q15: Do you have any comments on our proposals to allow the introduction of CPA without a modifying agreement in certain circumstances?

[3] Based on a survey carried out with 1,000 individuals contacting the StepChange Debt Charity telephone helpline between April and June 2014

We are concerned that that in regards to CPA requests the new rule CONC 7.6.2AR is only subject to 7.6.12R. This means that while high-cost short-term lenders are restricted from attempting to use CPA on more than two occasions, other consumer credit providers do not need to operate under the same stricture.

We question why the FCA makes this differentiation between different forms on consumer credit lenders in this regard. Surely it is important for consumers in financial difficulty to have the same protection no matter what form of credit agreement they have. We would recommend that the FCA specifies that CPA use by firms is restricted to two requests whether they are high-cost short-term credit providers or not.

Q16: Do you have any comments on our proposal to add guidance on the duration of debt management plans?

As we understand it the purpose of this new guidance is to prevent the existence of long-term DMPs with monthly charges, which result in outstanding debts barely reducing. As such, we strongly agree with the proposal. However, we are aware that in some cases people seeking advice from free to client not-for-profit debt advice providers may be recommended long duration DMPs where there is no other option for dealing with their debts; or no other proportion that the client will enter into. We would appreciate more clarity from the FCA on how DMP's made in these circumstances would be viewed under the proposed guidance

At this point we would like to bring the FCA's attention to the issue of charging structures of fee-charging debt management firms. This is directly related to client choice, particularly in terms of longer-term DMP.

Currently there's no way for consumers to easily compare DMP fees. This has led to a situation where DMCs can present DMPs with a potentially high cost in a perverse or opaque way. We can share with the FCA examples of this activity. For example, we have seen a firm that charges fees for a DMP with a confusing and extortionate fee structure, based on an annual % of the outstanding debt charged.

In this circumstance it is almost impossible for customers to make an informed choice. Rather than letting DMCs pick their own examples which minimise the costs and don't allow cross-comparison, we believe it would be fairer to have standard illustrative example which have to be followed industry-wide and would have prominence on websites.

Case Study

A client we recently advised has previously has a DMP with a fee-charging DMC. The DMC had not fully explained the fees the client would be charged as part of the DMP. Therefore although the client had increased his payments each month, the fee the company charged increased with it. So increasing the payment actually made little difference.

The client had asked for timescales and was told repayment would take 2 years and 6 months at £500pm payments. But following our calculation a free plan would be 1 year and 1 month at that payment amount.

Q18: Do you have any comments on our other proposals relating to debt?

We agree in principle with the proposal to remove the need to provide advice in a durable medium to a customer if a contract is unlikely to be entered into. However, we would like the FCA to provide more detail on the new wording on 8.3.6A (b) regarding how a firm should ‘record its reasons for being satisfied on the point’. We are concerned that if a firm is offering advice but then transferring to another firm for a solution it would not have to provide the results in a durable medium. Where the solution is, for instance, an IVA provided by a firm exempted from FCA regulation this could allow it to circumvent FCA intentions and potentially get away with poor advice. The FCA should ensure this rule is tightened so this cannot happen.