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Debt collection and debt sales

The Lending Code, the latest edition of which came into force on 31 March 2011, includes, within Section 9 (Financial difficulties), a range of provisions on debt collection. These provisions apply not only to subscribers but also to the agents they appoint to act on their behalf for the collection of debt. There are also provisions regarding the due diligence that firms should undertake when selling a customer's debt.

Following consultation with subscribers and the Lending Code Sponsors, it has been agreed that the Code should be amended to extend the provisions relating to the sale of debt and outsourcing of collections activity to debt collection agencies (DCAs). The relevant amendments to the Code can be found in Appendix A.

To support the consistent interpretation and application of the amended Code provisions, we have outlined below how we expect the new obligations to work in practice.

1. Transfer of data to DCAs and debt purchasers

Paragraph 230.1 is intended to ensure that all of the relevant information about customers in financial difficulty is passed to a DCA, or to a debt purchaser when a subscriber sells the debt.

The LSB acknowledges that in certain circumstances debt is passed to specialised third parties (such as trace or re-connection agents) because of an absence of relevant or up to date information about the customer or the account. In these circumstances we would expect the subscriber to tell the third party about any information that they know to be out of date or inaccurate, and to inform the agent or purchaser of the most recent action that has been taken in relation to the debt.

Where it is available to subscribers, the relevant information to be passed by them to third parties should include:

- Relevant information about the account or confirmation that this information will be made available as needed (e.g. for disputed debts).
- The amount currently owed.
- The last known contact details for the customer.
- The details of any current or recently lapsed repayment arrangement.
- With the customer's consent in each case, relevant information such as the name of any party acting on the customer's behalf, health issues, complaints, disputes, or any circumstantially specific information relevant to the collection of the debt.
- Information about the customer's agreed method of contact, where known, (in accordance with paragraph 188 of the Code). The DCA or debt purchaser should respect this choice for as long as the customer remains co-operative.

In relation to customer requests for preferred methods of contact, the LSB acknowledges that subscribers may only be able to observe these where such a facility is available. In cases where a contact preference request has been received and agreed with the subscriber before the account is passed to a DCA or sold to a debt purchaser, it should continue to be observed by the DCA or debt purchaser after the debt is transferred or sold. Where the subscriber was not able to grant the preference request, there is no requirement for the third party to do so subsequently. However, in accordance with paragraph 188 of the Code, DCAs and debt purchasers are obliged to consider any such new requests that they receive from customers in the future.

Paragraph 230.2 is intended to ensure that where a repayment arrangement has been agreed between a subscriber and a customer, it is allowed to continue after the debt is transferred to a DCA or debt purchaser, until the scheduled review date.

This does not necessarily prevent the DCA or debt purchaser from contacting the customer, provided that they have a valid reason for doing so, but any such contact must not result in customers who have already agreed a repayment arrangement being asked to increase their payment until the scheduled review date. It will only be appropriate to ask a customer to increase their payment where, following scheduled review, it is clear that the customer's circumstances have improved and they can afford to pay more.

As stated in paragraph 233, it has become common practice for DCAs and debt purchasers taking on a debt to request a new statement of income, expenditure and assets to understand the customer's most up to date position. However, if an up to date statement of income and expenditure is held on record or a repayment plan is being maintained and the review date has not yet been reached, it would be inappropriate to request an updated statement.

The desired outcome should always be that customers do not experience collections activity from third parties about whom they have not received prior notification in line with Paragraph 232. The circumstances in which customers are contacted once a debt has been passed to a DCA or debt purchaser can be left to the judgement of the subscriber and third party involved. . Any payment arrangement entered into should be agreed on the basis of an understanding of the customer's circumstances and an assessment of affordability.

Subscribers have advised us that in most cases the systems used to transfer data to third parties are the same irrespective of whether the account is being passed to a DCA or sold to a debt purchaser. In light of this, the LSB is of the view that the provisions set out in paragraphs 230.1 and 230.2 need not draw any distinction between DCAs and debt purchasers and can apply consistently.

Paragraphs 231.2 and 244 have been amended to ensure that additional care is taken when dealing with certain types of debt.

Where a customer or his agent has provided appropriate and relevant evidence of an ongoing mental health problem that affects the customer's ability to repay their debts, the debt should not be sold. Where subscribers pass a debt to a DCA, the DCA should be provided with (subject to compliance with paragraph 239) relevant and appropriate information about the customer's condition to enable them to deal sympathetically and positively with the customer's ongoing mental health problems.

The LSB acknowledges that this will only be possible where the subscriber holds the information about a customer's mental health problem in their records and has obtained the customers explicit consent to release this specific information to a third party. The LSB does not expect that subscribers will be able to rely on the consents obtained at the point of account opening to achieve this.

By passing relevant information in a timely manner, subscribers will ensure that customers in financial difficulty continue to experience outcomes in line with Code requirements, after their debt has been passed on to a third party. Contact between the third party and the customer must be proportionate, relevant, and informed by the previous relationship and prior communications between the subscriber and the customer.

2. Subsequent sales

Paragraph 231.5 is intended to ensure that customers continue to receive a proportionate level of protection under the Code when their debt is sold to a debt purchaser and then subsequently on-sold following the initial sale.

The Code requires subscribers to satisfy themselves for both initial and subsequent sales (where these are permitted) that appropriate arrangements are in place to ensure that debt purchasers will continue to deal with customers in a manner that is consistent with the requirements set out in the Code for the treatment of customers in financial difficulties.

The responsibility for satisfying these Code obligations rests with the subscriber who initially sells the debt. The LSB acknowledges that subscribers might gain assurance that debt purchasers will continue to deal with customers in a manner that is consistent with the Code in a number of ways. We do not believe it is appropriate to prescribe how subscribers should go about assessing ongoing compliance with the Code for subsequent sales, or how they should use and present this information to the LSB. However, subscribers might achieve this by ensuring:

- 1) That the subsequent sale of a customer's debt following the initial sale of the debt from subscriber to purchaser is allowed only if the following conditions are met:
 - The subscriber provides written consent to the sale, and
 - the initial purchaser has undertaken a thorough due diligence review of the proposed subsequent purchaser that evidences that the proposed purchaser will comply with data protection legislation, consumer credit legislation, Office of Fair Trading guidance on debt collection and debt management, the code of the Credit Services Association(CSA) and the Lending Code's standards for handling financial difficulties even if the proposed purchaser is not a subscriber, and
 - the subscriber has satisfied itself that the requirement for the proposed purchaser to adhere to the standards referred to above is documented in a contractual agreement between the initial and the proposed purchaser; or
- 2) That sales following the initial sale of the debt from subscriber to purchaser may only take place between the initial purchaser and either:
 - a purchaser who has evidenced that they subscribe to and operate within recognised industry best practice (such as Certification under the CSA and Debt Buyers and Sellers Group (DBSG) Codes of Practice); or
 - a purchaser in respect of whom the subscriber conducts (or has within the previous 12 months, conducted) due diligence and is satisfied that the proposed purchaser will continue to deal with customers in a manner that is consistent with all relevant Lending Code standards; and
 - the subscriber has satisfied itself that the requirement for the proposed purchaser to adhere to these standards under either option is documented in the contractual agreement between the initial and the proposed purchasers.

Feedback from subscribers and CSA/DBSG members suggests that the vast majority of accounts that are sold and subsequently re-sold relate to customers

with whom subscribers, DCAs and debt purchasers have been trying, without success, to initiate dialogue and action for several years. With a view to striking a proportionate balance between the interests of genuine customers in financial difficulties and subscribers and debt purchasers who are dealing with disengaged '*won't pays*', the provisions in respect of subsequent sales are restricted to the first such sale following the initial sale by the subscriber. Additionally, there is no continuing requirement on either the subscriber, or the initial purchaser, in cases of subsequent sale, to satisfy the LSB through ongoing monitoring, that relevant Code standards are being met.

3. Monitoring and audit of initial sales

Paragraphs 231.3 and 231.4 are intended to ensure that subscribers will undertake appropriate monitoring in respect of initial sales of debt to satisfy themselves, and the LSB, that debt purchasers to whom they have sold customer's debts continue to deal with those customers in a manner that is consistent with the relevant requirements of the Code and the relevant contractual terms.

Such monitoring may involve a review of the purchaser's controls and compliance in relation to tranches of purchased debt, and need not be restricted to specific customers or groups of customers.

Subscribers are required to conduct this monitoring activity at least annually where they continue to sell debt to a purchaser, and for a further two years after they have stopped selling debt to that purchaser.

Paragraph 231.4 is intended to ensure that subscribers are able to take action to address any breakdown of control or consumer detriment where a debt has been sold. The LSB acknowledges that the action taken by the subscriber will vary, depending on the materiality of the detriment and the degree of contractual or Code non-compliance.

The spectrum of appropriate actions may range from subscribers requiring the debt purchaser to implement a remedial action plan through to the exercising of a contractual right that results in the subscriber re-purchasing the debt or the purchaser forfeiting the right to the debt.

4. Pre-notification to customers when a debt is passed to a third party

Following feedback received from subscribers and DCAs acting on their behalf, the LSB believes that a clearer articulation of the interpretation and expected application of paragraph 232 of the Code is required. The objective of paragraph

232 of the Code is that customers always know who is handling their debt before collections activity (e.g. any attempt to contact the customer with the intent of soliciting payment or assessing the customer's circumstances) is undertaken by someone other than the subscriber.

Through conversations with subscribers, industry stakeholders and the DCA community we have, however, identified some operational challenges to prescribing very restricted practices that permit only the subscriber to notify the customer of sale or outsourcing of collections activity to a DCA and always before the account has been passed to the DCA or debt purchaser.

The LSB believes that subscribers are likely to be able to demonstrate compliance with paragraph 232 of the Code by evidencing one of the approaches detailed below:

- i. A 'goodbye' letter is sent to the customer by the subscriber confirming the name of the specific DCA or debt purchaser to whom the account is being passed. The subscriber may decide to provide the contact details for the DCA or debt purchaser and revised payment instructions at this point and advise the customer that any queries about the account should be addressed to the DCA or debt purchaser from the date of the letter until further notice. The DCA or debt purchaser must not begin collections activity until the customer might reasonably have received the letter; or
- ii. Following placement of an account with a DCA or sale to a debt purchaser, the DCA or debt purchaser immediately sends a combined 'goodbye/hello' letter to the customer. The letter is sent by the DCA or debt purchaser on behalf of the subscriber using the subscriber's approved letterhead and branding. The letter should clearly inform the customer that the account has been passed to the DCA or sold to the debt purchaser by the subscriber. This letter should confirm relevant information about the account and the contact details for the DCA or debt purchaser and revised payment instructions. The DCA or debt purchaser must not begin collections activity until the customer might reasonably have received the letter.

The pre-notification obligations in paragraph 232 apply specifically when debts are passed to DCAs who are third parties appointed by a subscriber to act as their agent or to debt purchasers. Where subscribers continue to deal with customers in financial difficulties themselves using their own staff and name or a different trading name or branding the obligations set out under paragraph 232 of the Code do not apply, provided that it is clear to the customer that they continue to deal with the subscriber.

The relevant amendments to the Code are set out in the attached appendix. An updated version of the Code that reflects these changes will be published in due course.

The new and amended provisions will take effect on 1 May 2012 to allow subscribers time to make the appropriate systems and process changes.

Yours sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Chris McAteer
Compliance Director

Appendix A

Debt collection agencies and debt sales

Summary of Code changes

Paragraph 230 of the Code has been extended to specify a minimum level of information to be passed by subscribers to DCAs and debt purchasers. The revised and extended paragraphs should leave subscribers in no doubt that it is their responsibility to pass the minimum level of data to DCAs and debt purchasers.

New provisions have been added to paragraph 231 to require subscribers to satisfy themselves and the LSB that arrangements are in place which ensure that subsequent debt purchasers will continue to deal with customers in a manner that is consistent with the Code's standards.

New Code provisions have been created within paragraph 231 that require subscribers to conduct routine audits and monitoring of debt purchasers. Extended provisions in relation to monitoring obligations in respect of debt sale apply only to the sale by the subscriber to the initial debt purchaser and do not extend to subsequent sales of the debt.

Current Code wording in respect of debt collection agencies and debt sales is set out below with revisions in red.

228. Subscribers should follow a due diligence process when selecting third parties for debt management, which should include third party compliance with data protection legislation, consumer credit legislation, Office of Fair Trading guidance on debt collection and debt management, and the code of the Credit Services Association.

229. Subscribers should ensure that the Code standards for handling financial difficulties are applied by such agents, through due diligence and periodic audit and review. Code compliance standards should form part of all third party contracts.

~~230. Subscribers should pass on relevant information to enable the third party debt manager to recover the debt.~~

230.1 Subscribers should ensure that all relevant available information held by the subscriber relating to the debt is passed to any DCA or any debt purchaser.

230.2 Subscribers should inform the third party of any relevant arrangements currently being complied with by the customer. The provisions in paragraph 222 relating to repayment plans continue to apply where a debt has been passed to a DCA or sold. Existing repayment plans which have been agreed with the customer and

which are being met must be respected until the scheduled review date.

- 231.1 Subscribers should follow a due diligence process when selecting any third party for debt sale. Any new contract should ensure that the third party will comply with data protection legislation, consumer credit legislation, Office of Fair Trading guidance on debt collection and debt management, the code of the Credit Services Association and the Lending Code's standards for handling financial difficulties even if the debt purchaser is not a subscriber.
- 231.2 Additional care needs to be taken when dealing with certain types of debt. Where a customer or his agent has provided appropriate and relevant evidence of an ongoing mental health problem that affects the customer's ability to repay their debts, the debt should not be sold.
- 231.3 Subscribers should undertake appropriate monitoring in order to satisfy themselves that debt purchasers to whom they have sold customers' debts continue to deal with such customers in a manner that is consistent with the relevant requirements of the Code and the relevant contractual terms. Such monitoring should be conducted at least annually where subscribers continue to sell debt to a purchaser, and for a further two years after they have stopped selling debt to that purchaser.
- 231.4 The results of the monitoring referred to above should be used to satisfy the subscriber and the LSB that all of the relevant Lending Code requirements in respect of the debts sold are being adhered to. Where instances of non-compliance are identified through monitoring, subscribers must be able to evidence that appropriate action has been taken to remedy any breakdown of control or customer detriment
- 231.5 Where a subscriber agrees to a subsequent sale of the debt, they must satisfy themselves that appropriate arrangements are in place to ensure that following the sale of the debt, the subsequent debt purchaser will continue to deal with customers in a manner that is consistent with the requirements set out in the Code for the treatment of customers in financial difficulties.
- 232 Customers should be advised before **or at the time** their debt is passed or sold to a third party by a subscriber. The intended outcome of this provision is that a customer should always know who is handling their debt and should not ~~receive any contact~~ **experience collections activity** from the party to whom the debt has been passed or sold without having received prior notification from the subscriber of the transfer.
- 233 It is common practice for third parties taking on a debt to request a new statement of income, expenditure and assets to understand the customer's

most up-to-date position. However, if a statement has only recently been completed or a repayment plan is being maintained and the review date has not yet been reached, it would be inappropriate to request an updated statement.

244. If a subscriber has received appropriate and relevant evidence of a customer's mental health problems that affect the customer's ability to repay their debts, the debt should not be sold. In these circumstances subscribers should also ~~they should~~ consider whether it is appropriate to pass ~~or sell~~ the customer's debt to a DCA.

Where subscribers pass a debt to a DCA, the DCA should (subject to compliance with paragraph 239) be provided with relevant and appropriate information about the customer's condition to enable them to deal sympathetically and positively with a customer with ongoing mental health problems.