

The LSB's Information for Practitioners

The Standards of Lending Practice for
personal customers

Financial difficulty

September 2016

This document has been produced by the LSB and provides non-exhaustive examples of the approach Registered Firms (Firms) may wish to take into consideration when seeking to adhere to the Standards of Lending Practice (the Standards) on financial difficulty.

Registered Firms must be able to demonstrate to the LSB that they are adhering to the Standards of Lending Practice; however the LSB does not monitor compliance with the content of this document and as such, it is not intended to be prescriptive nor binding on Registered Firms. The LSB acknowledges that each Firm will have its own way of demonstrating that it is adhering to the Standards without the need to refer to, or take account of, the content of this document.

Where a Standard cross references to the Consumer Credit Act 1974, as amended (the CCA), the Consumer Credit Sourcebook (CONC) or other Financial Conduct Authority (FCA) requirement, the examples or suggestions which follow represents the LSB's view on how the Standard could be achieved but should not be considered to supersede the wording or intention of the CCA/CONC or the FCA.

This document will be kept under review and will be updated on an ongoing basis as the LSB gathers further examples of the work which is being undertaken by the industry in this area.

1. Firms should have triggers and processes in place to identify customers who may be in financial difficulty and should act promptly and efficiently to address the situation with the customer [CONC 7]

The LSB considers a customer to be in financial difficulty when their income is insufficient to cover reasonable living expenses and meet financial commitments as they become due. This may be as a result of a significant change in the customer's situation such as: loss of employment, a decrease or fluctuation in income, break down of a relationship, bereavement, a serious accident or illness which prevents them from working/affects their ability to work as much as they would like to. This list is not intended to be exhaustive but is intended to demonstrate that there are differing reasons as to why customers may find themselves in financial difficulty.

In addition to the indicators of financial difficulty provided in CONC, Firms will have differing ranges of information available to them which can be used as a means of indicating that a customer may be experiencing financial difficulty. The customer may display a range of behaviours such as:

- items repeatedly being returned unpaid due to lack of available funds
- failing to meet loan repayments or other commitments on time
- discontinuation of regular credits
- regular requests for increased borrowing or repeated rescheduling of debts
- increases in interest bearing credit card balance(s)
- making frequent cash withdrawals on a credit card at a non-promotional rate of interest
- repeatedly exceeding a credit card or arranged overdraft limit without agreement
- frequent incurrence of unarranged overdraft/late payment/over-limit fees
- frequent requests for refunds of fees and charges which have been applied in line with the terms and conditions
- long term minimum repayments on a credit card without good reason
- the customer informing the Firm that they are, or at risk of being, in financial difficulty.

Ideally, Firms which offer multiple credit products should have a 'single view' of their customers, particularly those who are in arrears on more than one credit line with the Firm. This has been a problem for many firms for several years. It is recognised that the costs of single view management capability are not insignificant, and the efforts of some of the larger organisations have been hampered due to mergers taking place over the years and inheriting legacy systems which do not 'talk to each other'.

Area for consideration: where a Firm does not have the ability to deal with all customer products at the same time it is suggested that a process for communication of completed income and expenditure or agreed repayment plans is established internally. This could be undertaken with a view to the importance of debt repayment, i.e. mortgage, followed by any business borrowing, and, ultimately, unsecured debts. This could provide a better customer outcome in that there is no repetition of process or additional calls made.

What might good practice look like? regular training of agents, particularly in softer skills (questioning and active listening), coupled with a quality assurance programme that is aligned to the delivery of good customer outcomes can help to ensure that agents build their confidence in dealing with customers and ultimately achieve the right outcome for the customer.

Area for consideration: firms may wish to introduce a more outcomes based assurance model for the purposes of call monitoring. Through the introduction of more customer led and soft skills based calls, the metrics for a good or bad call can be based on whether the outcome was correct for the customer concerned.

2. Customers identified as being in financial difficulty should be provided with clear information setting out the support available to them and should not be subject to harassment or undue pressure when discussing their problems [CONC 7]

When a customer is identified as being in financial difficulty, the LSB would suggest, in line with current industry practice, that they are contacted with a view to understanding the customer's situation through appropriate questioning, the outcome of which can be used to determine how the customer's account should be handled. During the course of a conversation it may become evident to the agent that the customer lacks capacity to deal with their financial situation for one reason or another, this may mean that the call is passed to a dedicated team to progress the conversation with the customer.

The appropriate level of intervention/support required will be dependent upon the individual customer's position and the information obtained. This could take the form of one or more of the following:

- referring the customer to free, impartial debt advice
- applying breathing space
- undertaking an assessment of affordability with a view to setting up an affordable repayment plan
- referring the customer to a dedicated team (where available) if, for example, they are vulnerable
- returning the account to the original creditor, where this is an option
- restructuring the debt to offer a repayment break or an extension in the term of, for example, a loan
- where the product is available, and the eligibility criteria met, offering a customer an opportunity to open a basic bank account which would provide them with a reasonable level of protection over their funds.

The LSB believes that there is a benefit for Firms to seek to ensure that members of staff who deal with customers in financial difficulty are familiar with the range of insolvency products available to customers and that some are only applicable in certain jurisdictions, for example, the Debt Arrangement Scheme for customers based in Scotland. The expectation is not that staff have an in-depth knowledge of the products and how they work but that they have an awareness of them and are able to signpost customers where relevant.

Where a customer is experiencing financial difficulties they should be able to engage constructively with the Firm in order to address the situation. The use of chargeable telephone numbers could potentially cause the customer further financial distress. Whilst the LSB recognises the rule contained in CONC¹ that *a firm must not require a customer to make contact on a premium rate or other special rate telephone number the charge for which is higher than to a standard geographic telephone number*. The LSB would encourage the provision of freephone telephone numbers when customers are contacting a Firm in respect of any element of financial difficulty.

3. Firms should demonstrate an empathetic approach to the customer's situation; listening to and acting upon information provided by the customer with a view to developing an affordable and appropriate solution

Affordability

Before agreeing a repayment plan with a customer, it is beneficial for Firms to have sufficient information regarding the customer's financial situation to enable them to assess whether any proposed repayment plan is affordable.

This can be achieved through appropriate questioning, as well as listening to and acting upon the information provided by the customer. Obtaining sufficiently detailed information regarding the customer's income, expenditure, assets and liabilities, including any amounts owed to other priority and non-priority creditors will help the agent to do this. Other factors could also be taken into account, for example, whether the customer:

- is self-employed
- has an irregular income
- is likely to experience a change in income etc in the foreseeable future which will have an impact, either positively or negatively, upon their ability to manage their finances.

Area for consideration: encouraging agents to explain what constitutes a priority bill can aid the customer's understanding. Where they are in arrears on their priority bills but with no arrangement in place, the customer could be referred to debt advice rather than having a repayment plan set.

Setting out the benefits of going through an affordability assessment and what this entails to the customer at the outset of the conversation, may help to further the customer's understanding of why they are being asked to provide such information and how it will be used. It may be that the customer does not have the necessary documents/information to hand at the point in time and it would, therefore, be helpful to both the Firm and customer to defer the call to a mutually agreed time.

Reflection point: firms may wish to consider whether staff would benefit from the incorporation of dedicated training on developing effective listening skills into training modules which could help to ensure that they have the ability to actively listen, and confidence to draw upon and probe further, where necessary, the information provided by the customer.

¹ See CONC 7.9.5R

What might good practice look like? agents building a good rapport with a customer which results in some information being imparted prior to an affordability assessment being completed. However, this can lead to **poor practice** when the agent then starts to complete the assessment of affordability and their manner of questioning demonstrates that they have not listened to what the customer told them. This requires the customer to either repeat information they have already provided and, more often than not, extends the call unnecessarily.

What might poor practice look like? failing to probe a history of missed repayments to fully understand the customer's underlying reason for arrears and whether this is indicative of longer term financial difficulty.

What might poor practice look like? not taking into account information provided by the customer regarding changes in their overall household income which may impact upon their ability to meet their repayments. For example, their partner has been/is about to be made redundant, there has been a decrease in the household income or they/their partner are on, or are about to start, maternity leave.

The information provided by the customer should be assessed in light of what is known about their circumstances and whether it is consistent with these, so that when considered as a whole, the affordability assessment is realistic.

What might good practice look like? a 'past, present, future' approach could help agents to understand a customer's overall financial and personal situation much more quickly through tailored questioning on areas such as why the customer fell into arrears, what the present position is in terms of income, expenditure, employment, family, other creditors, and what might change in the near future, be that positive or negative.

Reflection point: rather than agents suggesting a figure(s) for expenditure where the customer is unsure, allow the customer time to collate the information and provide the correct figures, by arranging a call back.

What might poor practice look like? failing to consider information obtained during previous calls, either due to poor record keeping following earlier conversations or due to lack of experience or training in accessing file notes. This may result in customers having to go through details which they have already provided and can lead to disengagement if the customer feels that they are not being listened to.

Repayment plans

Area for consideration: in some circumstances, rather than setting up a repayment plan, the customer's situation may benefit from placing the account on hold; for example, they may be starting a new job in the near future or are due to move house/flat; the account could be allowed to 'rest' until the customer is able to provide realistic details regarding their net income, commitments etc. Applying a period of breathing space in such situations could mean that the Firms has more accurate figures to work with when it comes to developing the repayment plan.

What might poor practice look like? repayment plans are set up without having obtained realistic/accurate information from the customer.

There will be customers who, for whatever reason, decline to go through an assessment of affordability but are willing to make a repayment or set up a repayment plan. While the Firm may not be able to establish whether this is affordable for the customer, it may not always be in the best interests of the customer to refuse the offer of repayment. In this situation, the LSB's view is that such payments can be accepted or a repayment plan put in place; however for the benefit of the customer's understanding, the Firm should reiterate what the process entails and the benefits of providing the information. The outcome of the conversation should be documented within system notes.

In this situation, in order to ensure that the customer is able to sustain the repayment plan, the customer's account should be subject to regular review. The customer should be advised that if the plan proves to be unsustainable, they will be contacted with a view to undertaking an affordability assessment. The outcome of this may mean that the customer pays more than they are paying under the existing plan because the assessment indicates that they can afford to do so, or it could demonstrate that the plan is unsustainable and therefore it will need to be revised.

Similarly, there may be customers whose assessment of affordability demonstrates that they have negative disposable income but the customer is insistent upon setting up a repayment plan. Subject to appropriate questioning about how they will be able to afford the repayment, a plan can be set. However, as set out above, the customer's account should be subject to regular reviews and they should be advised that if the plan proves to be unsustainable, they will be contacted with a view to understanding if anything has changed or to discuss any revisions to the repayment plan that may be required.

In the absence of the information required to undertake a full assessment of affordability, if the customer can provide some key information, a 'short form' affordability assessment could be undertaken as an interim measure. However, this may not be appropriate where the Firm has reason to believe or to suspect that the customer is vulnerable. A Firm should consider whether the plan is affordable for the customer at that point in time, taking into account key information regarding:

- employment status
- level of income
- status of priority debts
- what, if any, non-priority debts they have and the status of these
- any other relevant information regarding the customer's financial situation.

The LSB would expect the Firm to monitor the performance of this type of plan and continue to attempt to contact the customer to undertake a fuller affordability assessment. If the Firm has made repeated attempts and the customer refuses to engage, then the plan can continue if it is performing. This type of plan should be subject to a regular review period until contact is made with the customer and affordability assessed, and system notes reflect the attempts made.

Once a repayment plan has been agreed, it would be useful for the customer to receive confirmation of this and a copy of their income and expenditure form for future use, for example when a repayment plan is due for review.

It is common practice for a Firm taking on a debt, whether on a contingent or purchased basis, to request a new income and expenditure statement to understand the customer's most up-to-date position. However, if a statement has only recently been completed and provided to the third party or a repayment plan is being maintained and the review date has not yet been reached, consideration should be given as to whether an updated statement should be requested. The Firm which outsources or sells the debt, should, however, provide details of any agreed repayment plans and income and expenditure statements to the third party.

When dealing with a customer who has other non-priority debts in addition to those owed to the Firm, consideration could be given to accepting payments based on pro-rata basis. There will be circumstances where this may not always be appropriate for the customer's situation; for example, the customer may already have a repayment plan set up for another creditor or may choose to repay more to a higher debt or one which is continuing to attract interest. However, the option can be explored with the customer (subject to the customer having full details of all other creditors to hand to ensure that a fair amount is agreed).

If the customer does not co-operate with the Firm, a plan cannot be developed and the Firm may wish to proceed with normal debt recovery procedures. Lack of co-operation would include not responding to the Firm's attempts at contact and unreasonable demands by the customer (for example, a request that the debt be written off or repaid over a very long period, even though the customer could afford to make reasonable repayments).

Token payments

A Firm may wish to accept a token offer where the customer has demonstrated they have no surplus income available for their 'non-priority' creditors and where they have proactively made an offer of repayment. The customer would benefit from being made aware of whether or not a token offer will be regarded as an agreed repayment plan and whether it will therefore prevent the debt from being registered as in default with the Credit Reference Agencies (CRAs).

When taking into account the information provided by the customer, a Firm may wish to consider whether it is in the best interests of the customer to accept an offer of a token payment. If their situation is such that they have no disposable income or they are seeking to make long term token payments, alternative options may be more appropriate. These should be explored with the customer and could include, for example, placing the account on hold to allow for an improvement in the customer's circumstances.

Partial settlements

Where a customer indicates that they are in a position to offer, and the Firm is willing to accept, a partial settlement, the customer should be advised of the implications for their credit file and how the settlement will be recorded at CRAs.

4. If an offer of repayment is made via the common financial statement/standard financial statement, this should be used as the basis for pro-rata distribution amongst creditors covered by the plan [CONC 7]

Firms will have established policies and procedures for dealing with offers of repayments made via a debt management Firm, whether 'free' or 'fee-charging'. However, for completeness the following paragraphs outlines the expectations for Firms:

If a customer works with a third party to complete a common financial statement/standard financial statement (CFS/SFS), the Firm should accept this as the basis for pro-rata distribution amongst creditors covered by the plan. Repayment offers based upon expenditure falling within the trigger figures of the CFS/SFS can be challenged by the Firm if there is reasonable cause to believe that the customer's income and expenditure figures may be incomplete or inaccurate.

The CFS Creditor Good Practice checklist promotes clear communications between creditors and customers. The following wording reflects that contained within the Debt Management Protocol:

- Firms should fully and constructively co-operate with debt management plan providers and should submit all relevant and reasonably requested material within 10 working days of the receipt of the request (where the customer has provided consent)
- Where a customer is repaying via a debt management plan, Firms should provide account balance information to the provider within 10 working days of receiving the request.
- Firms should, where possible, provide customers with a phone number on all communications that will put the customer in contact with a named person or a team dedicated to dealing with cases of financial difficulty.

5. Firms should have appropriate policies and procedures in place to identify and support vulnerable customers where this impacts on their ability to pay

Being in financial difficulty can be a stressful situation for a customer who is not vulnerable, therefore when dealing with a customer who has been identified as, or the Firm has reason to suspect that they may be, vulnerable there is a greater need to fully understand the customer's circumstances.

Having the structures and processes which allow staff to investigate situations fully, and equipping them with the knowledge, confidence and skills to question and explore circumstances appropriately will enable them to identify the likely support needs of the customer.

The LSB would suggest that, wherever possible, Firms seek to establish a single customer view. It is acknowledged that for some, the ability to implement this across the organisation may be hampered by legacy systems, or it is not possible to generate a single customer view for customers with multiple product holdings. Consideration could be given to manual workarounds to help Firms to ensure that multiple accounts can be linked so that correspondence and account activity is coordinated. This will help to prevent customers from having to repeatedly provide the same information to the different areas of the business.

When developing a repayment plan for a customer who has been identified as vulnerable, but who is able to set-up or continue to maintain a plan, Firms may wish to give consideration to the financial impact that the vulnerability may have. Taking account of the cost of travel to hospital, medication, and the impact of a reduced income as part of the income and expenditure statement will help to ensure a plan is reflective of the customer's current situation. Identifying this expenditure will also help the agent to assess whether the proposed repayment plan is affordable and sustainable. Where a vulnerable customer is unable to set up a plan, Firms should consider placing the account on hold and agreeing regular reviews with the customer to check in on their situation.

The Money Advice Liaison Group (MALG) has produced a Debt and Mental Health Evidence Form (DMHEF) which provides a standardised approach for third parties and creditors to share relevant information about the customer's mental health condition from health and social care professionals. In line with current industry practice, Firms should consider the DMHEF if it is presented by the customer or, with the customer's consent, their adviser or medical practitioner.

If a customer informs a Firm that they have a mental health problem or other vulnerability that is impacting on their ability to manage any financial difficulty, the Firm should allow the customer a reasonable period of time to collect and submit relevant evidence to the Firm. Medical evidence should only be requested where this is needed to develop a response and should not be used as a barrier to providing the customer with support.

Use of flags

Firms may wish to develop or implement a code or a flag which allows for easy identification of customers who require additional support, or as a way of separating out customer accounts so that they do not fall into the general collections strategy. With a customer's explicit consent and in line with requirements of the Data Protection Act, where it is possible and appropriate, Firms can record relevant information about the customer on their system notes. The customer should then be informed as to how their information will be used and for what purposes.² Many Firms will have established specialist teams within collections to assist customers identified as vulnerable and in financial difficulty. Developing and maintaining relationships with free money advice agencies and charities can help to ensure that these teams are, and remain, effective.

What might good practice look like? the control framework could include case reviews which consider letters and calls made to customers identified as vulnerable over a period of time. This would allow a Firm to assess the effectiveness of its collections strategy including contact, approach to setting up a solution and evaluating whether the solution is appropriate given the customer's circumstances. The outputs could be used to feed into broader process, policy and strategy reviews.

² www.malg.org.uk/wp-content/uploads/2016/04/Flags-Final-Mar16.pdf

6. Customers who are in financial difficulty will, where appropriate, be signposted to free, impartial debt advice [CONC 7]

Ensuring that members of staff have a good understanding of the types of support that the free, impartial advice sector can offer and being able to tailor this information to the customer's situation can help Firms to ensure that appropriate referrals are made. The LSB's expectation is that the customer should be provided with a clear explanation of why the referral may be beneficial to their circumstances rather than just being told to contact a particular organisation. Customers may not always understand what support a debt advice agency can offer or may think that speaking to one will be viewed negatively or that they 'won't be able to help'. While the decision to seek advice is one for the customer to make, the provision of an explanation could also encourage the more reticent customer to explore the option.

Area for consideration: whether it is appropriate, from the information provided by the customer to refer every customer to free, impartial advice.

7. Firms should apply an appropriate level of forbearance, where, after having made contact with the customer, it is clear that this would be appropriate for their situation [CONC 7]

When applying forbearance or breathing space to a customer's account, the LSB considers it important that the customer understands what this means. Providing a clear explanation of what it entails, how this could be of benefit, and what it means in terms of the operation of their account will aid this understanding.

The explanation should, ideally, be more than simply informing the customer that it will be applied and should include the number of days it will be in place. Typically Firms will apply breathing space for a minimum of 30 days but there may be situations where a Firm decides that due to the customer's situation, a longer period of time may be more appropriate. This could include situations where the customer is experiencing a long-term illness, has had bereavement, or has been made unemployed.

A period of forbearance could be applied in circumstances other than when a customer has been referred to free, impartial debt advice. Following discussions with the customer, it may become apparent that setting a repayment plan would not be appropriate in the circumstances but there is expected to be an improvement in the customer's situation in the near future. This could be because:

- the customer is experiencing temporary unemployment but is due to start a new job soon
- there will be an increase in their income in the near future, because, for example, they are returning to work following maternity/parental leave, selling their property with a view to downsizing, in the process of applying for housing allowances or are changing jobs.
- they may be experiencing a longer term illness, which they are expected to make a full recovery from or are currently recovering from an operation or injury.

The application of forbearance in such examples would allow the customer time to deal with their current situation; a date could be arranged for a follow up call with a view to reviewing the customer's circumstances at an agreed point in time.

8. Where a customer remains engaged with the Firm and maintains their repayment plan, they will not be subject to unnecessary contact

This Standard does not preclude Firms from undertaking regular reviews of any established repayment plans. Each Firm will have a point at which a plan should be reviewed, typically this varies between six monthly and yearly but will also depend on the customer's personal circumstances.

The intended outcome is that customers are not contacted outside of the review period unless there is a good reason for doing so, for example, a payment has been missed or a Firm is aware that a debt management company operating on the customer's behalf is not/no longer authorised by the FCA.

Firms will typically contact customers before the expiry of any present arrangement to obtain details of their financial position at that time; however customers should not be expected to increase repayments unless there has been an improvement in their circumstances and affordability can be established. Firms may choose to undertake internal reviews but the LSB would only expect customers to be contacted when a repayment plan is approaching the agreed review date, unless repayments have not been maintained.

Area for consideration: where a repayment plan is agreed but payments received are slightly less than the amount agreed Firms may wish to consider automatically re-setting the arrangement for the lower amount. This reduces the need to contact customers until the time of the next plan review.

At the review stage, if it becomes apparent from appropriate questioning that the customer's personal circumstances have not changed since the plan was established or last reviewed, the Firm may wish to consider whether it is in the customer's interests to continue to undertake a further affordability assessment. i.e. is there any benefit for the customer or the Firm in prolonging, for example a telephone conversation when the customer's situation, and all the information previously provided, remains the same. This should be subject to confirmation that the customer is up to date with their priority bills.

9. Firms should consider freezing or reducing interest and charges when a customer is in financial difficulty

Where a customer is in financial difficulty and is unable to meet payments as they fall due, the continued application of interest and charges may add to their overall level of indebtedness. The decision to reduce or freeze interest and charges should ideally be based upon an assessment of the customer's ability to make repayments sufficient to meet contractual terms. A Firm's assessment should reflect the customer's lack of ability to pay rather than the stage an account has reached in the arrears cycle. Where the decision is made to decline a request to reduce or suspend interest and charges, the customer (or their authorised third party) should be advised of the reasons why.

The LSB's view is that interest and charges should not continue to be applied where this results in the repayment period becoming excessive for the customer. In forming a judgement on what might be excessive, a Firm should take into account the type of product and the individual customer's circumstances. If a customer is only able to make payments (token or otherwise) their debt should not increase as a result of any interest and charges applied to their account.

Area for consideration: repayment plans set up following receipt of offers from third parties are not subject to further interest or charges. The same approach could be adopted for customers using a self-help process.

Firms should ensure that a consistent policy is in place when it comes to the application of charges and interest concessions for customers who are in financial difficulty and who hold more than one product or account with the Firm.

Where a customer is repaying via a Debt Management Plan (DMP), Firms should advise the customer's DMP provider within 10 days of the repayment proposal being received, whether interests and charges will be frozen and, if this is not the case, the amount at which these will be applied going forward.

Concessions should not be arbitrarily withdrawn irrespective of a customer's ability to pay or without any evidence of a change in the customer's circumstances. Expiry of a repayment arrangement should not automatically lead to the withdrawal of concessions nor should an increase in repayments. The customer may be able to increase their repayments but this does not mean there has been a significant improvement in their circumstances; it would therefore be beneficial for a Firm to understand the customer's situation before deciding to reinstate interest or charges. This does not prevent regular reviews from being undertaken and if a customer's position has sufficiently improved then interest and charges may be reintroduced provided affordability is confirmed.

A Firm may wish to consider whether it amounts to a good customer outcome for interest and charges to be reapplied simply because a payment under an agreed repayment plan exceeds the contractual minimum for a product, particularly where the customer is not allowed any further borrowing. The customer's overall situation should be taken into account and consideration given to whether the reintroduction of interest and charges will significantly increase the life of the repayment plan and if so, the Firm should consider freezing interest and charges.

10. All communication with the customer/their authorised third party will be undertaken in a clear and open manner, via the customer's/third party's preferred method of communication (where this is known, appropriate and available) [CONC 7]

Communications with a customer or their third party should acknowledge and reflect any previous contact made and any resulting discussions that may have taken place to date. Where a customer requests that the Firm deals with them in writing or email rather than by telephone, this should be accommodated.

If a third party authority has been received, the Firm should communicate through the authorised person or organisation. This does not preclude a Firm from copying correspondence to a customer where it believes it is in the best interests of the customer to do so. If this is the case, the decision to do so should be documented within system notes.

On occasions a Firm may need to contact the customer directly when an authority is in place. If a Firm makes the decision to do so, and the Firm is aware that the customer is vulnerable, Firms may wish to consider whether this would be appropriate in the circumstances and document within system notes. Where a customer is contacted directly, the Firm should explain the reasons for the contact and why it was not appropriate to speak to the customer's authorised third party.

In certain circumstances it may be beneficial for discussions (either face-to-face or over the telephone) between the authorised third party and Firm to take place with the customer present.

Where a customer has a debt adviser operating on their behalf, Firms should accept the authorisation provided for the duration of any repayment plan. The LSB does not believe that it is necessary to request that the authority is renewed, for example, on an annual basis, unless advised by the customer that the debt management company is no longer acting on their behalf, or the Firm is aware that the debt management company is no longer authorised by the FCA.

11. Firms should take into account the customer's circumstances and consider whether it would amount to a fair customer outcome to pursue, or to continue to pursue, the amount owed

Where a Firm considers the customer's personal and financial circumstances to be exceptional and unlikely to improve, the Firm could, amongst other options, consider writing off or not pursuing part or all of the customer's debt(s). The decision to do so is for each Firm to make on the basis of the individual customer's situation. The factors which could be taken into consideration when reaching a decision could include:

- the customer's circumstances
- the amount owed to the Firm
- the customer's age
- repayment history
- anticipated time to repay the debt
- how long the account has been in arrears or, where relevant, with the debt purchaser
- employment history
- last known income

- last known disposable income
- any arrangements with other creditors, if known.

Writing off the debt would mean that the balance is set to zero at the CRAs and that no further payments are due. If a debt is written off, the customer and relevant third parties including CRAs and, where applicable, the customer's adviser should be advised of the decision to do so.

However, if collection of the account is simply frozen or if any balance remains outstanding and collectable, this should be made clear to the customer and any adviser, and the customer should be told whom they should communicate with about the account.³ Where write-off is requested by a customer or adviser but is not considered appropriate by the Firm, the LSB would encourage the Firm to provide its reason(s) in writing. If the Firm agrees to a write-off, then the debt may be registered as a default with the CRAs and the customer advised of the implications of this on their credit file.

Right of set-off

The process regarding the use of right of set-off is contained in BCOBs and BCOBs industry guidance. Here, the focus is on the use of right of set-off if a Firm suspects, or is aware that the customer is in financial difficulty.

Before applying set-off a Firm will want to take account of information available to it to identify whether the customer is in, or is at the risk of, financial difficulty. The LSB would not expect set-off should to be applied where the customer is co-operating with the Firm and:

- the Firm is aware of, or has reason to believe that the customer is in, or at risk of being in, financial difficulty;
- the Firm is aware that the customer is seeking debt advice.

Set-off should normally only be used to make up the most recent missed payment. However if the Firm has contacted the customer about missed payments, told the customer that set-off is an option, and used the information available which confirms that the customer is not at risk of, or in, financial difficulty, it may be used to make up earlier missed payments. A Firm may also take more than one missed payment where the customer is not co-operating, for example, by not responding to repeated attempts to make contact.

What might good practice look like? At least on the first occasion after set-off has been used, a Firm should contact the customer to advise them that set-off has been applied and the customer should be encouraged to take appropriate action in the future to avoid missed payments.

If it is evident from subsequent contact with the customer that they are now in financial difficulty either as a result of the use of set-off or otherwise, the LSB's expectation is that at least on the first occasion, any amounts debited via the right of set-off should be credited back to the customer.

In addition, appropriate action should be taken promptly to ensure that they are treated fairly, sympathetically and positively as required by the Standard of Lending Practice.

³ www.malq.org.uk/wp-content/uploads/2015/04/Guidelines-2015.pdf

12. Firms should follow a robust due diligence process when selecting third parties for debt collection or when selling a debt

a. Firms should ensure that when a customer's debt is sold, the purchaser continues to apply the relevant protections provided by the Standards of Lending Practice. Monitoring should be undertaken at least annually where a Firm continues to sell debt to a purchaser, and for a further two years after a Firm has stopped selling debt to that purchaser

b. If a customer has provided appropriate and relevant evidence of an ongoing mental health or critical illness that affects the customer's ability to repay their debts, the debt(s) should not be sold

c. Where a Firm is aware that a customer is terminally ill, the debt(s) should not be sold

The due diligence process for selecting third parties for debt collection should be sufficient to satisfy the Firm that the third party can meet the requirements of the Standards of Lending Practice and the Consumer Credit Sourcebook (CONC). Any due diligence should also include third party compliance with consumer credit legislation, data protection legislation and the code of the Credit Services Association.

The LSB would expect Firms to undertake sufficient call listening and a full assessment of the third party's quality assurance, internal monitoring, training and incentives schemes to assure themselves that the right standards are being met and the right behaviours are being promoted. In terms of what constitutes sufficient call listening, this will be judgmental based on the size of the Firm but should be a sufficient for the Firm to be satisfied that standards are being consistently met, with calls, spread across different advisers, and the sample to include calls that have been internally quality assured. The Firm should review what compliance monitoring activity and has been undertaken in the last 12 months to assess what work has been conducted, any issues raised and any action taken.

The LSB would expect that adherence to the Standards of Lending Practice forms part of all third party contracts and Firms should ensure that the outcomes for handling financial difficulty cases are applied by such agents, through due diligence and periodic audit and review.

Firms 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 Standards of Lending Practice and the contractual terms. Such monitoring should be conducted at least annually where Firms continue to sell debt to a purchaser, and for a further two years after they have stopped selling debt to that purchaser.

The results of the monitoring referred to above should be used to satisfy the Firm and the LSB that all of the relevant requirements of the Standards of Lending Practice in respect of the debts sold are being adhered to. Where instances of non-compliance are identified through monitoring, Firms must be able to evidence to the LSB that appropriate action has been taken to remedy any breakdown of control or customer detriment.

Where a Firm 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 Standards of Lending Practice for the treatment of customers in financial difficulty.

The Standards of Lending Practice prohibit the sale of debt where there is evidence of an ongoing mental health problem or critical illness that affects the customer's ability to repay their debt. Where vulnerability is identified by the creditor, which impacts upon the customer's ability to repay their debt, these accounts should be ring-fenced and not sold.

Area for consideration: where a Firm identifies a customer as being vulnerable, or it has reason to suspect that they may be, the debt is not passed to a debt collection agency for contingent collection.

Vulnerability can occur at any time during a customer's relationship with their lender, including post debt sale. Responsibility for managing such accounts should be agreed between the creditor and the purchaser up front, though any decision should give due consideration to:

- assessing each case on its merits, which may include having regard to the nature and longevity of the customer's situation; and
- the customer experience and risk to customer outcomes.

The guiding factor here is to ensure a seamless and uninterrupted customer experience and a fair outcome. The industry has instigated the development of minimum standards across creditors and their debt collection agencies (DCAs) and purchasers, to minimise any interpretational issues and agree best practice. The working group has established measures to ensure customers in vulnerable circumstances are treated appropriately and consistently, and get the support they need. This work will be reflected in this document once it has been completed.

What might good practice look like? Due diligence frameworks and audits ensure outsourced collections agencies and debt purchase Firms have processes in place to deal fairly with customers identified as being vulnerable.

Firms should seek to ensure that adequate system notes are maintained and updated following any discussion with a customer who is in financial difficulty regarding their account so that the approach taken can be evidenced. This also helps to ensure that a customer does not have to repeat information already provided and allows any agent of the Firm to be brought up to date with details of the customer's situation before the call is made.