



Guidance on consumer credit debt counselling

The following guidance explains when firms providing advice to a client will be performing the consumer credit regulated activity of debt counselling. The guidance also explains the main areas to watch out for if you are debt counselling.

STEP 1: IS IT DEBT COUNSELLING?

Who can provide debt counselling?

In these circumstances the firm will have to be either:

- a consumer credit firm as defined within the **DPB (Consumer Credit) Handbook**; or
- Financial Conduct Authority (FCA) authorised.

When does giving advice become debt counselling?

Debt counselling involves the following:

1. It is advice given to:
 - a) a borrower about the liquidation of a debt due under a credit agreement; or
 - b) a hirer about the liquidation of a debt due under a consumer hire agreement.
2. The advice must relate to a particular debt and debtor.
3. It covers the giving of advice and not just mere information.

If an exclusion applies, the activity is not a regulated activity.

What is the liquidation of a debt?

For FCA purposes, this has a wide meaning including:

- the debtor being released from a debt;
- paying off the debt in full and in time;
- agreeing that the debtor pays a reduced repayment amount;
- agreeing a rescheduling of debt repayments;
- a third party taking over the debtor's obligations under the credit agreement;
- discharging the debt through personal insolvency procedures.

When does advice relate to a particular debt and debtor?

Where the advice is given to the general public in a publication or radio or television broadcast, this will not be debt counselling. However, advice given to a particular debtor about a specific debt, over the internet may be debt counselling.

What is advice?

The key element within the regulated activity of debt counselling is advising the debtor as to which course of action to take. Advice in this context requires the firm to provide an opinion or make a recommendation to the client.

The advice may be provided in various ways including:

- face to face;
- by telephone;

- to a group;
- by correspondence.

A neutral and balanced explanation of the various options available to the client would not be debt counselling, but care needs to be taken not to imply that a certain course of action would be most suitable for the client as that could be considered to be advice, and therefore subject to the requirements of the DPB (Consumer Credit) Handbook.

Is there any advice that a consumer credit firm cannot give?

Regulation 4.14 prevents DPB consumer credit firms from providing debt management plans (which are in effect a combination of the regulated activities of debt counselling and debt adjusting). Providing a debt management plan is restricted to FCA authorised firms only. For more information please refer to the regulation in the DPB (Consumer Credit) Handbook.

What if someone needs advice but you cannot provide it?

Where the firm has been approached for debt advice, but is unable to provide such advice or identify an appropriate solution, the firm should consider whether it should refer the person for advice elsewhere.

The firm may wish to consider making a referral to, or providing the contact details for, another adviser, such as an insolvency practitioner (IP). However, in situations of a more urgent nature, such as financial difficulties requiring immediate attention, or in situations where the person is unable to pay for professional fees, the firm should consider referring the person to an appropriate not-for-profit debt advice body.

As with any referral, the firm should consider the ethical implications of making the referral, including the suitability of the third party to meet the client's needs.

Where the third party to which the referral is to be made provides a full range of debt solutions or is able to provide advice on a full range of debt solutions, this will not be debt counselling as no recommendation is being made (see the 'what is advice' section above).

Where the third party only provides one particular type of debt solution, the firm will in effect be making a recommendation to the consumer client to enter into that particular type of debt solution by directing the client to that provider. This will be debt counselling and therefore subject to the requirements of the DPB (Consumer Credit) Handbook, including acting in the best interests of the client. Example 12 below considers this scenario.

Is it debt counselling?

Here are some practical examples of what is and what is not debt counselling. This applies to advice provided by the firm, any persons representing the firm (principals and staff), and insolvency practitioners.

	Activity / scenario	Is this debt counselling?	Who can undertake this work?
1.	You advise client along the lines of 'I recommend you enter into a debt management plan'.	This is debt counselling. This is advice which steers the debtor in the direction of a debt solution which the debtor could enter into as a means of liquidating his debts.	Consumer credit firm
2.	You advise client along the lines of 'I recommend you do not enter into a debt management plan'.	This is debt counselling. This is advice which steers the debtor away from a particular debt solution which the debtor could have entered into as a means of liquidating his debts.	Consumer credit firm
3.	You advise client along the lines of 'I suggest you change (or do not change) from a debt management plan to a debt arrangement scheme'. A debt arrangement scheme refers to a debt payment programme under the Scottish debt arrangement scheme (DAS).	This is debt counselling. This is advice that steers the debtor in the direction of a different debt solution from the one that he has already entered into as an alternative means of liquidating his debts.	Consumer credit firm
4.	You advise client along the lines of 'I recommend you do not borrow more than you can comfortably afford'.	This is not debt counselling as it is about incurring debts, not liquidating them.	Any firm
5.	You advise client along the lines of 'I would recommend that you explore the pros and cons of all the different debt solutions that may be available to you'.	This is not debt counselling. It is unregulated generic advice because it does not steer the debtor to any particular course of action in liquidating his debts.	Any firm

6.	You advise a client along the lines of 'I think that reaching an informal agreement with our creditors about repaying your debts may not be the best option available to you given your circumstances. I will set out the pros and cons of various other debt solutions that may be more appropriate to your circumstances but ultimately the option you choose will be a matter for you'.	This is likely to be debt counselling. It does not recommend a precise course of action but, this does not necessarily matter. The firm is making a value judgement and giving an opinion and is steering the debtor towards certain courses of action and away from others. In particular, the firm has recommended that the debtor does not deal with his debts by way of an informal agreement.	Consumer credit firm
7.	You give an explanation of the way that various types of debt solution work.	If this is given in a balanced and neutral way it is likely not to be debt counselling as it is just factual information.	Any firm
8.	You give a comparison of the features and benefits of one type of debt solution with another and the implications of entering into the two different types of debt solutions.	If this is given in a balanced and neutral way it is likely not to be debt counselling as it is just factual information.	Any firm
9.	You advise on uncertain questions about a debt management plan.	The element of uncertainty is likely to mean that the advice has a strong element of opinion and hence is likely to be advice, rather than mere information. It is likely to be debt counselling as long as it steers the debtor towards a course of action in liquidating his debts.	Consumer credit firm
10.	You distribute leaflets or illustrations that help debtors to decide how they will liquidate their debts.	This is not debt counselling as it is advice given to the general public.	Any firm
11.	You explain how to fill in a form for entering into an IVA.	It is unlikely that a person would provide this advice on its own by way of business. If a person provides this help in the course of carrying on some other unregulated activities he will not be debt counselling as it should be seen as providing information not advice.	Depends

		<p>If though he provides this help in the course of a wider debt counselling business it will be included as part of that debt counselling activity.</p> <p>If the explanation is given by the insolvency practitioner the exclusion in article 72H of the RAO (Insolvency practitioners) is likely to be available.</p>	
12.	You recommend that a debtor obtains advice from a particular debt counselling firm, ABC Debt Management.	<p>Taken on its own it is not debt counselling because the firm is 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 debt counselling).</p>	Depends
13.	You advise along the lines of 'I recommend you prioritise the repayment of your electricity bill over all other debts'.	This is likely to constitute debt counselling, if having considered all of a debtor's outstanding debts, a firm advises the debtor to prioritise the repayment of a utility bill (e.g. an electricity bill) over his other outstanding debts (including debts arising under credit agreements or consumer hire agreements).	Consumer credit firm
14.	You (for example, a money adviser) help a debtor to draw up a budget, e.g. providing a budget planner to see how much disposable income the client has each month or how long the client's money could last over a particular period.	This is not debt counselling if all the firm does is to provide a debtor with information about his budget and the process is limited to, and likely to be perceived by the debtor as, assisting him to make his own choice as to a course of action he might take in liquidating his consumer credit-related debts.	Any firm
15.	You give budgetary advice.	This is debt counselling if the firm advises the debtor how to match income and debts. For example, the firm may advise the debtor to reduce discretionary spending to a set amount each month to enable him to pay off a certain amount of a large credit card bill each month.	Consumer credit firm

		<p>It does not matter if the result of the advice is that the debtor should pay off his debts in full, rather than by instalments over a period of time or by entering into some sort of repayment plan, as debt counselling is not limited to advice about being released from paying the debt in full or rescheduling.</p>	
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STEP 2 : WHAT ARE THE KEY ACTIONS IF I AM DEBT COUNSELLING?

Should the firm (including the principals, staff or IPs) provide debt counselling services then additional regulatory requirements in the DPB (Consumer Credit) Handbook will apply. These additional requirements include acting in the best interests of a consumer client and always acting in a manner that is clear, fair and not misleading.

The debt counselling key points below provides an aide-memoire of the key actions you need to take.

Debt counselling key points

1. Is the advisory work covered within your engagement letters? (Regulation 4.01)

2. Have you acted in the best interests of the client? (Regulations 4.09-4.11). This includes:

- Have you provided sufficient information and explanations about the suitable options available, including sources of impartial information?

Examples:

The Insolvency Service's online guide 'Options for paying off your debts' for England and Wales, the Department of Enterprise, Trade and Investment's (Northern Ireland) guide 'In Debt? Dealing with your creditors' for Northern Ireland, and the Scottish Government's 'Debt Advice and Information Package' (DAIP) and the Accountant in Bankruptcy's 'Debt and the consequences' for Scotland.

- Have you explained how the different solutions work?
- Have you explained the actual/potential advantages/disadvantages?
- Have you explained the relative costs of each solution?
- Have you explained the possible consequences and risks?

Examples:

Credit agreement and consumer hire agreements: Not making payments will cause the account to go into arrears, default charges being applied and could lead to the creditor taking recovery action. Ignoring correspondence from creditors could also lead to accounts failing into arrears.

Debt management plans: Regulation 4.14 prohibits a consumer credit firm from providing debt management plans to its consumer clients. The risks are:

- the time it takes to set up such a plan could result in accounts falling into arrears or increasing arrears;
- action to recover debts may involve further costs to the consumer client;
- creditors may refuse to accept payments or continue to add interest and charges, or pursue other recovery action;
- if the consumer client is a homeowner, creditors may seek a charging order to secure their debt against the property;

- there is no guarantee that any ongoing recovery or legal action will be suspended or withdrawn;
- someone entering into a debt management plan will be expected to live within a controlled budget; and
- most plans only include repayment of consumer credit debts, so the consumer client will have to continue making payments for other outgoings including tax, rent or mortgage and utilities.

Individual Voluntary Arrangement (IVA) or a Protected Trust Deed (PTD):

- the risk of bankruptcy if the arrangement or deed fails;
- homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended;
- there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
- creditors may not approve the individual voluntary arrangement or the protected trust deed; and
- only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period. Unsecured debts not included will remain outstanding.

Bankruptcy:

- bankrupt's home and on occasion other possessions may be sold;
- there are restrictions on the expenditure of an undischarged bankrupt as surplus income may be used to repay creditors;
- only unsecured debts included in the bankruptcy will be discharged at the end of the bankruptcy;
- for the duration of bankruptcy, an individual cannot act as a company director; and
- bankruptcy may impact on an individual's profession – for example accountancy.

Most debt solutions: Will only offer debt relief from unsecured debts, and certain debts will not be included, such as student loans, fines and debts arising from family proceedings. Bankruptcy and sequestration, entering into an IVA, a debt relief order, a debt payment programme or a PTD will be entered on a public register. See schedule 5 to the DPB (Consumer Credit) Handbook for more details.

How long the matter will show on the customer's credit file and that the customer may not be able to obtain credit or other financial services in the future. Bankruptcy, sequestration, a debt relief order, IVA, a PTD, or a debt payment programme will all be recorded on an individual's credit file. Adverse information is generally kept on a consumer's credit report for six years.

A debt management plan may also be recorded on the client's credit reference file. Some creditors may ask for a note to be put on the file to say that the client is in a debt management plan.

Even missed payments on a credit debt, are recorded on credit reference files, so someone who has been struggling to pay their debts could have adverse information recorded on their file. If someone is in a debt management plan, creditors may still record that payments have been missed, as the client will be paying less than agreed when they took out the original credit agreement.

These kinds of adverse entries may impact on the consumer client's ability to obtain credit in the future.

- Have you explained the conditions that apply to each option?
- Have you explained which debts are covered?
- Have you explained the reasons why a particular option is most suitable for the consumer client?

3. Have you ensured you are not providing a debt management plan (prohibited under Regulation 4.14).

4. Have you referred the client to, or provided contact details for, a debt advice provider or not for profit organisation in circumstances where the consumer credit firm is unable to provide advice or an appropriate solution? If so have you considered all the ethical aspects?

5. Have you recorded all of the above? (Regulation 4.02).

6. Has the client been provided with a note of any advice provided and any financial statement prepared (Regulation 4.10).