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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money wisely.

The Trust's main activities are giving advice, supporting advisers and improving the UK’s money and debt environment.

We help approximately 1 million people per annum through our direct advice services and by supporting advisers through training, tools and information. We give advice to around 200,000 people every year through National Debtline and around 40,000 businesses through Business Debtline. We support advisers by providing training through Wiseradviser, innovation and infrastructure grants.

We use the intelligence and insight gained from these activities to improve the UK’s money and debt environment by contributing to policy developments and public debate around these issues.

Public disclosure

Please note that we consent to public disclosure of this response.
**Introductory comment**

We welcome the opportunity to contribute to the independent review of the Lending Code.

The Lending Standards Board (LSB) has been extremely proactive in working with the advice sector to develop the Lending Code over the years. The Lending Code is a good example of self-regulation because it is subject to a regular review, an update process and independent scrutiny and compliances reviews of individual code subscribers.

We are strong supporters of the code and find it extremely useful in explaining to our clients what they should expect from their lenders. It is also a very useful benchmark for clients to use when considering how to take it further if their lender does not follow the code.

We value the benefit the code has brought to how consumers in financial difficulties are treated by lenders. There is a much helpful content in the current code such as recognition of the Common Financial Statement, how offers should be accepted, what a token payment means, and rules for holding action and on freezing interest and charges. The code has also promoted breathing space and the adoption of the MALG debt and mental health guidance and the Debt and Mental Health Evidence Form (DMHEF). We also think the code has been effective in its recent work to put rules in place to cover debts being transferred to debt collection and debt purchase companies, particularly on the history of the debt, and what to do with vulnerable customers.

The drawback to the Lending Code is the ability of the LSB to require subscribers to agree minimum standards. Membership is on a voluntary basis and it can be difficult to ensure compliance with the code. In the last review we saw some recommendations were not adopted or altered which we can only assume was due to an inability to persuade subscribers to agree to the recommendations.

We particularly recommend that the LSB considers whether it needs to strengthen its ability to enforce the code. One consideration is whether the LSB should commit to naming firms that take part in any themed review.

One example we would use is around the issue of in-house collection departments in the big banks using collections arms that resemble solicitor firms. This practice has been commonplace for many years but it is only recently that it has become an issue because of the intervention of the FCA. As this is not covered in the Code, how would the LSB deal with such an issue? We feel that the LSB has such an insight into the workings of its members that there would be real scope for the LSB to be able to influence best practice further.

We think there is scope for publicising the work of the LSB through the website. This could take the form of a newsletter which interested parties could subscribe to on the LSB website. There should also be press releases released when the LSB issues updates, newsletters and where the results of a themed review have been announced.

It is also worth considering whether the code itself is sufficiently publicised at branch level. Does the LSB need to conduct further monitoring to ensure that all bank staff are aware of the code provisions?
We would support a requirement throughout the code on subscribers to use plain English throughout customer facing materials such as account terms and conditions and for customer communications including direct correspondence.

We understand that the LSB is keen to consider expanding the scope of the code to other sectors. We believe strongly in helping industry to raise standards and believe the LSB is well placed to help with this. This would obviously need the support of the relevant trade associations but our experience with the LSB tells us that it is well placed to widen its scope and promote good practice.

We believe that the LSB could add further value to consumers by showcasing successful models of early intervention and sharing best practice. The LSB could help to develop a best practice model in dealing with consumers in debt.

There should be a much more detailed section setting out the standards for dealing with clients who are vulnerable. There should be more work done to tighten up when lenders should freeze interest and charges and hold action.

**Basic bank accounts**

We have noted that there is not a specific section in the code that covers basic bank accounts. We would suggest a designated section on basic bank accounts would be a useful improvement to the code.

We have a general plea for banks and partner organisations to continue to explore basic bank account provision by the development of alternative payment methods such as ‘jam-jar’ accounts, to assist low-income consumers with budgeting and provide access to cheaper direct debits.

We would suggest that the code will need updating in the relevant places to reflect the provisions of the new agreement to offer fee-free basic bank accounts to all unbanked and to minimise charges for unpaid direct debits and standing orders.¹

We also note that basic bank accounts are not generally available for small businesses. We would suggest that the Lending Code should require basic bank accounts to be made available to the self-employed to run their businesses. The proposals for safe personal bank accounts should be extended to business accounts.

We would suggest that in order to comply with the key commitment in the Code to deal “fairly and reasonably” with customers, some form of basic banking service should be available to people who are bankrupt or have a debt relief order. We would like to see a more explicit commitment in the Code to ensure that subscribers offer banking services to all unless there is a history of fraud.

Comments on individual sections of the Code

Section 1 Key commitments

We have concerns that the Code contains some high-level commitments that can be too open to interpretation. The Key Commitments section includes the requirement that:

“Subscribers will act fairly and reasonably in all their dealings with customers…..”

Although we would clearly support these commitments, it can be very difficult to make sure that high-level commitments are not open to too wide an interpretation by firms. We suggest that when using such terms, the code always gives key messages and explanation of how the code expects firms to interpret these commitments.

The Key Commitments need to be examined to make sure they reflect the CONC rules on advertising and promotions. The key commitment on complaints also needs to reflect any changes as a result of the FCA consultation on complaints handling.²

We would welcome a key commitment in relation to digital exclusion. We are mindful that the on-going proliferation of web-based banking services could see multiple benefits for consumers. However, it is vital that the UK’s many digitally excluded are not also excluded from financial services as a result. The transition to an increased number of online interactions between banks and customers must be managed carefully to ensure that those without regular access to the internet do not suffer.

Section 2 Communications and financial promotions

We would suggest that the Code goes further in strengthening the message about the requirement on companies to obtain consumer consent for marketing and advertising by other companies as set out in section 2.24.

In addition, this section is silent on the issue of lead generation, credit broking and fees. We suggest the code should have a separate section to cover these issues or an expanded sub-section within section 2.

We would suggest that it should be a requirement to provide a loan summary box in a standard format rather than a voluntary initiative as set out in section 2.21.

We would also repeat our call for an additional requirement for lenders to plain English their letters and other communications.

Section 3 Credit reference agencies

Consumers should be able to shop around for credit without generating a footprint that counts against their credit rating. We suggest that it should be compulsory to offer a quotation search that does not appear on credit files.

We also are concerned that there could be confusion over the practice of offering indicative APR quotations. It would appear that it is not compulsory to offer an indicative APR for a risk-based product although it is “industry best practice”. If this is carried out then it will not necessarily appear on the consumer’s credit file. However, a full credit check will be carried out where the firm does not offer an indicative APR. We have concerns over representative rates of APRs and whether it is misleading if lots of consumers do not get the rate quoted. Are the rules sufficiently clear and transparent?

We have said previously that we believe that firms should provide the main reason for refusal of credit following a credit assessment to all applicants and not just when requested to do so. This should be reflected in the credit reference agency (CRA) section. In particular this should be a requirement in section 3.44 where the code only requires information on CRAs to be given “if a customer asks”.

We also support lenders providing a useful reason for the refusal that goes beyond this. We see no reason why lenders could not give a set of suggested action for the consumer to take such as making sure they are on the electoral register and how to do this.

Free-to-client advice agencies regularly see cases where there are issues regarding data accuracy and the quality of the data on individual credit reports held by credit reference agencies. It would be helpful if the code would commit subscribers to ensure data is up-to-date, accurate and complete before it is passed to credit reference agencies. There should also be a commitment to put errors right both quickly and efficiently once discovered.

Section 4 Credit assessment

In the previous code review, we understand the reviewer wanted the provisions on credit assessment in the OFT Irresponsible Lending Guidance to be included within the code. Although the Lending Standards Board agreed to strengthen its requirements it is unclear how this has been done in practice.

Clearly it is vital that the Lending Code is strengthened to be compatible with, and reflect the FCA credit assessment rules in CONC. We would suggest that the code is strengthened to include more stringent credit assessment requirements. Section 4.50 makes suggestions as to a list of factors for lenders to consider but only asks that firms take a view on what is appropriate to consider in section 4.51.

“Subscribers should take a view on which of the above factors it is appropriate to consider in any particular circumstance dependent on, for example, the type and amount of credit being sought and the potential risks to the borrower.”

The code is silent on what will happen if a lender discounts all the factors set out in the code for consideration. We believe requirements on lenders should be strengthened to ensure a full assessment of financial circumstances is taken into account.
We would also suggest that where lenders are unable to offer a credit product, that the code review considers an additional requirement, perhaps in certain circumstances, to refer the applicant to sources of free debt advice. We are concerned that consumers are at risk of falling into a spiral of debt where they are refused credit and then seek higher-priced more risky credit products which can in many cases make their situation worse. They would often be best advised to review their financial situation with a free, independent debt adviser rather than taking out further credit.

In the last code review, the reviewer recommended that the Lending Code be amended to require that in all circumstances when a lending application is declined, the customer should be given the main reason for the decline, without having to ask. This recommendation was not taken forward but we still would support this recommendation. This should be implemented for all reasons where a lending application is declined, without the consumer having to ask, not only in circumstances where the reason for the decline relates to a search undertaken with a CRA. We consider that this would be a measure that would be fair and transparent for the consumer.

Additional provisions for micro-enterprise customers

We would suggest consideration is given to requiring subscribers to inform small businesses about alternative sources of credit at the point where a bank turns a small business down for credit. It is not clear to Business Debtline that this is being done in every relevant case.

We note that under section 254, a subscriber may suggest an “independent review” of the business prospects. It is unclear who would carry out such a review or how this would be paid for. Whilst it is to be commended that the subscriber should support a rescue plan if they think it will succeed, it may be difficult for a struggling small business to obtain free business advice. We would suggest that reference is made in this section to Business Debtline as a free source of debt advice for small businesses.

Potential guarantors should be urged to take independent legal advice. It is vital that the guarantor fully understands the implications. It should be completely clear where the guarantor is in fact a joint signatory for the loan rather than a guarantor. The guarantor should be treated in the same way as the customer as ultimately they could be held liable for the loan, may have to pay back the debt and their credit rating may be affected. Therefore, a full and comprehensive credit check needs to be made on the ability of the guarantor to pay the loan back.

We have raised concerns previously about all monies charges. From a small business perspective, we note that if the provisions in the Lending Code that relate to the taking of security (sections 57 to 75) are followed correctly then the issues regarding all monies charges should diminish over time. Although we still have issues raised with regards all monies charges, these tend to relate to older borrowing. It is vital that the risks of taking out an all monies charge are made extremely clear to borrowers who may be securing current and future borrowing on their property.
Section 5 Current account overdrafts

We understand that the FCA will now be investigating how providers set and monitor overdraft limits and their governance and strategies for doing so following the research that they published in 2014.³

We would like to see the code strengthened in relation to the withdrawal of overdraft facilities. We are concerned that the unexpected withdrawal of overdraft facilities may tip many people and small businesses into financial difficulties.

The bank reducing or removing their overdraft facility can well be the trigger for a crisis in the client’s finances. They may realise they have reached the end of the road and need urgent debt advice. We hope this is a trigger for them to get free, independent debt advice. However, it will also be likely to lead to potentially harmful other borrowing perhaps through a payday loan. The client may increase the debt owing on credit cards just to pay the bills that month. They may also fall behind with essential priority bills such as their rent or mortgage. This is likely to make a bad situation infinitely worse as they then have priority debts to pay as well as their bank overdraft and other borrowing plus the interest and charges from the overdraft.

The code is silent on good practice in relation to how an overdraft should be paid back whilst keeping the account going such as by negotiations to agree reducing the overdraft limit at an agreed rate that the consumer can afford. This would assist cases where overdrafts are removed arbitrarily, followed by a request for immediate payment.

There should be a further commitment on ensuring fees and charges on overdrawn accounts are fair and reasonable. A tariff of default charges should be established for current accounts to ensure all charges are transparent, fair and considered to be reasonable. Furthermore, we would urge that levels of interest that can be charged by banks in relation to both authorised and unauthorised overdrafts are not overlooked. Work should be undertaken to examine whether there should be limits on the amount of charges and default interest that can be charged when a consumer is in debt and unable to pay.

We also have concerns over the level of fees and charges for unauthorised overdrafts, which are similar to some of those we’ve seen in the payday industry. Unauthorised overdrafts are one of the most expensive forms of credit available, and can result in consumers facing spiralling and unexpected financial difficulties.

The section in the code on overdraft fees, charges and default charges provides clarity on the type of information that needs to be provided to borrowers. It is silent on when charges should apply and under what circumstances they should be removed. The section is also silent on the “fair and reasonableness” of the charges themselves. We believe that the code should set out a tariff or guidance on what a reasonable level is for charges.

We would also suggest that it is difficult to compare costs between different account providers because there are often complex charging structures in place for overdraft fees. Some lenders charge for each transaction whilst overdrawn, whilst others charge a fee for the days the consumer uses the overdraft or a combination of the two. Daily charges can

add up and do not appear to be subject to caps. The use of buffer zones may also be misunderstood by consumers who can fall foul of more complicated provisions.

Where a customer is consistently dipping into an unauthorised overdraft, this is clear sign that there is an underlying financial difficulty. Banks should at this point be referring them to free debt advice. The code should include best practice standards for dealing with customers in financial difficulty, including as a result of unarranged overdrafts and overdraft charges.

We would like to see the Code requirements expanded so that they include a specific requirement to show overdraft interest rates on statements and to indicate exactly how much an overdraft has cost in interest over the statement period. The Code should also indicate the charges that may apply to that account on each statement as well as a specific breakdown of the charges that apply to the account over that statement period.

**Small business concerns**

We would suggest that the situation with regards business overdrafts needs to be addressed. Business Debtline has reported their concerns regarding cases they see on a regular basis. A business can have an overdraft limit which they are managing and using to run their business, but they may receive a letter that terminates their overdraft facility with little or no warning. The lack of notice and subsequent sudden loss of the overdraft facility can cause the business to collapse. It appears that some providers are offering alternative high interest loans which are sometimes secured on property. If the overdraft belonged to a limited company, this effectively turns the debt into a personal secured loan.

However, the payment levels for the new loan may not be affordable. As a consequence of non-payment, this can lead to the loss of the family home as well as the collapse of the business. We would suggest that the code considers the following suggestions to help alleviate this situation:

- the requirement to provide adequate set notice periods for terminating business overdrafts;
- a staged reduction in the overdraft limit on the account at an affordable rate over time rather than outright termination; and
- the development of a new model for dealing with such cases, as it does not appear that a high-interest personal loan at an unaffordable rate is a viable solution.

We would support a much greater degree of flexibility when negotiating on business overdrafts. Where the total overdraft facility is withdrawn this removes the ability to service on-going credit commitments. We would suggest that one possibility would be to maintain the level of the fluctuating overdraft based on a cash flow forecast and that the remainder of the borrowing be placed on a reducing loan facility at a commercial loan interest rate. Security would not need to be sought automatically as part of this scheme.

For example where a client has a £10,000 overdraft facility but during the course of the previous trading year the minimum this balance has reduced to is £7000, an overdraft of £3,000 could be offered alongside a loan of £7,000 on an affordable rate of repayment based on the client’s accounts. This would enable a business to continue to trade rather than close and pay back the overdraft over time.
Section 6 Credit cards

We have made comments to the FCA on its credit card market study terms of reference consultation. 4

We would also share our concerns about “the debt trap” for minimum payments and whether people are continuing to pay well beyond the length of time that it is reasonable to do so. We would like to see consideration given as to whether there should be a review of a customer’s financial position after a set number of years of paying minimum payments on a card or multiple cards. Can the code require such a review to be carried out and discuss whether in certain circumstances where it does not appear that the debts will ever be repaid, that an alternative product such as an interest-free loan or minimal interest loan should be considered instead. Furthermore, factors such as whether consumers are juggling the payments on multiple cards, using credit cards to pay for everyday expenses and are in vulnerable circumstances should be taken into account.

Freezing interest and charges

We want to see a consistency in approach when lenders freeze interest and charges.

We would like to see a commitment in the code for credit card companies and other lenders to continue to freeze interest at the review stage if a consumer increases their offer of payment. This practice penalizes people in debt whose circumstances start to improve and acts as a disincentive to pay and a disincentive for continued long-term cooperation.

Long collection cycles can be a problem as some lenders will not freeze interest until the borrower gets to certain point in the collection system. We would like to see the code address this.

We would make the same points as those we have made in section 4 above regarding the provision of reasons why a credit card application has been turned down. This should be done routinely in all cases and not just where the customer specifically asks. (Section 6: 106.)

As suggested at the previous review, we believe that it would be more transparent for the code to explain the protections available under “chargeback”. We do not believe that the current requirement that customers should be made aware of chargeback protection only if they contact their card provider in relation to a failed purchase is sufficient. In many cases, consumers will not know that chargeback exists so will have no reason to contact their card provider. (Section 6: 143.)

Credit card repricing

Clearly if this practice is to continue it should be carried out for good reason and not arbitrarily. We suggest the review looks into whether there is any evidence of consumer detriment in relation to the repricing of credit cards.

4 http://www.moneyadvicetrust.org/SiteCollectionDocuments/Policy%20consultation%20responses/Unilateral%20responses/Money%20Advice%20Trust%20response%20to%20the%20FCA%20Credit%20card%20market%20study%20terms%20of%20reference%20consultation%20paper.pdf
**Credit card representative rates**

We would suggest that there is consideration given as to whether the concept of representative rates should be referenced in the code. We understand that this refers to the rate that 51% of successful applicants will be given on application after credit scoring. With credit cards, the rate for purchases (as opposed to balance transfers or cash withdrawals) is used as the main rate to advertise the card. We would like to see if there is any evidence that more customers than expected are offered a different and higher rate in practice than the quoted representative rate.

**Credit card limits**

We would like to see a code commitment to allow customers to opt in to the facility to enable credit card limit increases on their accounts. We also would query whether the code should be strengthened in relation to the section on reducing credit card limits. The code should state that this should not be done arbitrarily taking into account any evidence that this might be causing consumer detriment.

**Credit card statements**

We would like consideration as to whether an annual credit card summary statement should be required to be issued under the code. Would this be a valuable addition to the summary box information currently required on monthly statements?

We would also suggest that credit card statements should be required to include a link to the invaluable Uk Cards CardCosts\(^5\) website which helps consumers to work out how long it will take to pay back a credit card at minimum payment levels or a set monthly payment.

**Section 7 Loans**

We would repeat our concerns relating to the requirement to only tell a consumer the reason their loan application has been turned down if they specifically ask. We feel that this should be told to applicants in all cases. We have some concerns around referrals to another lender as set out in section 7.169.

“If, after declining an application for credit, subscribers wish to refer a customer to another lender, they should seek the customer’s consent and make the customer aware that a referral is not an indication that a subsequent application for credit will be successful.”

There has been much concern about consumer detriment caused by credit brokers. The recent Citizens Advice Scotland report\(^6\) set out many concerns in relation to unsolicited marketing, misleading advertising, the activities of lead generation companies, a lack of transparency as to whether the company was a broker or a lender, passing on details to other brokers or loan companies without permission and refusing refunds of fees taken repeatedly from accounts using continuous payment authorities.

One of the recommendations in the report is set out below.

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\(^5\) [http://www.cardcosts.org.uk/](http://www.cardcosts.org.uk/)

“Lenders should review the relationships they have with lead generators and refuse to take leads from brokers which they find to act in a manner below their own standards of customer service.”

We would like to see the spirit of this recommendation replicated in the Lending Code. It is clear that the report is generally looking at the interrelationship between credit brokers, lead generators and lenders in the high-cost credit market. However, there is no reason not to take the warnings from that sector and translate these into good practice in the wider credit sector.

The FCA has taken decisive action to improve the activities of credit brokers with new rules in force from 2nd January 2015. These should be fully reflected in the Lending Code to ensure that all lenders embrace their provisions. The code generally does not set out coherent code guidance on the use of credit brokers, or passing on customers to third parties when turned down for loans. We would like to see a section in the code that covers these relationships. We would like the code to go further than the FCA new rules and prohibit subscribers from using leads from brokers who charge up-front fees or who try to use a continuous payment authority to repeatedly elicit fee payments from consumers. Subscribers should also be responsible for not using leads from brokers who use cold-calling techniques by phone, email or text for credit broking and lending purposes.

We also believe sections on data protection in the code need to be strengthened and reflected in a credit broking section particularly in relation to strict rules on not passing data on without consent.

We would also mention that for many consumers, the main interaction they may have with banks over credit brokers is asking their bank to cancel a continuous payment authority or to ask for a refund of unauthorised transactions. Whilst the rules and responsibilities with regards the cancellation of continuous payment authorities seem to have become clearer in relation to payday loans, there are many other types of product where a continuous payment authority might be used. It is vital that all banks ensure that they promptly cancel continuous payment authorities in relation to credit broking, and for magazine subscriptions, subscriptions for slimming pills/anti-aging creams/body building supplements and so on.

### Section 8 Terms and conditions

We would suggest that this section could be strengthened by a requirement in the code. Section 8.171 states as follows.

“All terms and conditions should be written in clear and intelligible language. They should be fair in substance and, when relating to personal lending, should reflect the requirements of the Unfair Terms in Consumer Contracts Regulations.”

However, we are aware through our work on assisting the BBA with a project on standard terms and conditions that in many cases terms and conditions of current accounts in particular are not clear or simple and not written in intelligible language.

The Lending Standards Board should take the initiative and work with the BBA and other parties to develop a set of requirements for terms and conditions to include in the code perhaps set out in an appendix. This may stipulate rules on the use of “small print”, plain

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Section 9 Financial difficulties

Introduction

We feel that the code has been most effective in its section setting out how firms should treat their customers in financial difficulties. We have some further comments and suggestions which we have set out under the headings below.

We would welcome clarity as to what “sympathetic and positive” means in practice. This could include:

- ensuring lender contacts for consumers are publicised and able to offer both support and a range of repayment options;
- the cost of being in debt is kept to a minimum with interest and charges being frozen;
- reasonable offers are accepted and it is made easy to make the agreed payments; and
- a commitment that while the person stays engaged and pays what they can they are not pursued further.

We would like to raise a new issue to be considered under the code review. Given the April 2015 pension changes, we are concerned that creditors will put pressure on individuals in debt to realise their pension and clear their debts, either in full or via a full and final settlement arrangement. We would like to see recognition of this within the Lending Code. Ideally there should be a prohibition on creditors putting pressure on clients to realise their pension assets or take pension income. Whilst we would welcome guidance on this from the FCA in relation to rules on forbearance rules, the Lending Code should also recognise this issue and act quickly to avoid future consumer detriment.

Proactive contact or early intervention

Banks, and current account providers in particular, are in a unique position to identify the early stages of financial difficulty. Our research with Barclays showed that in general customers welcomed banks using this information to proactively reach out and try to help.

The same research, conducted by the University of Bristol, set out a customer centric approach to early intervention activity. We suggest the banks should consider implementing thorough early-intervention practices to help prevent customers sinking into more severe financial difficulties.

We welcome the instances of good practice by some lenders in setting up systems to ensure they can identify customers at risk of financial difficulties and provide mechanisms to enable customers to contact them. We suggest the requirement to set up such systems should be enshrined in the code.
We also suggest that the code could be developed to require lenders to improve their systems to ensure that those who ask for help are not turned away because they do not happen to be in arrears as yet. This may include improvements in data-sharing to allow lenders to see the full picture. However, it can also come down to the customer journey for individual firms if their processes do not allow help at an early stage.

Further work needs to be done in the area of identification and reporting of customers who might be at risk of falling into collections. Lenders should intervene where behaviour on accounts such as the use of authorised or unauthorised overdrafts, incurring fees and charges through late payments, or making the minimum payment on credit cards is demonstrating a possible debt problem. Borrowers should be signposted for free debt advice in these circumstances.

Communicating with personal customers and their advisers

Under section 9.190 of the code, if the lender contacts a customer directly when they have an adviser, they will have to explain why they have done so. We agree with the last review recommendation that it should be a requirement that where there is an adviser in place, then the lender should always make contact through the adviser. This requirement should be particularly stringently followed where a client has been established as vulnerable for any reason. If the lender is unable to contact the adviser, then this should be a matter to raise with the advice agency rather than the client.

Consolidation loans

We believe that the code should be strengthened as previously recommended by the last code reviewer. Lenders should ensure all borrowing is paid off under a consolidation loan and not just require in-house borrowing to be consolidated. (Section 9.192.)

Furthermore, although the current code states that the monthly cost of a consolidation loan should be less than the monthly costs of the loans being consolidated, (unless there are exceptional circumstances where it is appropriate for that not to be the case) we do not feel this is adequate. (Section 9.193 and section 9.194.)

We would suggest that a major problem with consolidation loans is affordability. A stringent affordability assessment should be carried out with a detailed look at income and outgoings to be a requirement. It should only be possible to offer the consolidation loan if it genuinely reduces expenditure to an affordable amount. Merely reducing the monthly cost will not resolve financial difficulties if the monthly cost of the new loan is still beyond the household’s means. This leads to the likelihood of attempting to access further credit on top of the loan in order to make ends meet, or to start using credit cards again even where these were paid off under the new loan.

Right of set off and first right of appropriation

The Code should be amended to deal with cases where a lender continues to take payments for a loan or credit card out of a current account when their customer is in financial difficulties. This practice may ensure that the loan is up-to-date but may well push the account into overdraft with the associated fees, charges and interest.
We would like to see guidance outlining how sparingly this power should be used where the lender has been alerted to financial difficulties by the customer or an adviser. It does not appear to us to be helpful to offset the borrowing on one account (e.g. a credit card) by increasing an overdraft on another account, particularly where charges are applicable. The first right of appropriation needs to be looked at in conjunction with the right of set-off. We are concerned that there is no mention of this within the Lending Code. There needs to be a specific section on the first right of appropriation and how consumers can exercise this as well as clear guidance on training for front-line bank staff.

**Breathing space**

In the previous review, it was put forward that lenders should grant an extra 30 days unless there is a good reason not to do so. The code subscribers did not agree to do this. The code states lenders should grant the extra 30 days under section 9.203 if there is:

> “clear evidence of genuine progress being made towards a realistic debt repayment plan.”

We would like to see the code go further than this to at the very least have a presumption towards the granting of extra breathing space. Also, the current wording implies that no additional breathing space will be granted unless the client is working towards a proposal of a “realistic” debt repayment plan. This is very restrictive as the breathing space may be needed to fully explore all debt options and the client may not be able ultimately to put forward offers of repayment if their circumstances are found to mean another debt option is more suitable.

We have concerns that some lenders may not respond within the breathing space timescales. This should be a requirement under the code. Non-compliance could be the subject of monitoring by the LSB going forward. If lenders do not respond appropriately within the timescales set out, then interest and charge will still be routinely added for longer than necessary to the detriment of the person in debt whose debts will continue to grow. MAT, StepChange, AdviceUK and others, are working to develop a statutory ‘breathing space’ scheme to fill the gap in the support available to people with temporary financial difficulty. This would introduce some of the provisions in the Scottish Debt Arrangement Scheme (DAS) to England and Wales. The plan would be to allow further elements of DAS to be built into the scheme as part of developing a statutory debt management plan feature of the scheme.

Through the scheme, people in temporary financial difficulty would get a suspension of collection and enforcement activity by creditors, freezing of further interest and charges and creditors being required to accept repayments at a level that is objectively affordable or freeze repayments altogether where appropriate. It would be free to the client and accessed through the free debt advice sector, and able to run for up to two years (with interim reviews).

We also believe that it should be made clear that breathing space should be granted in all reasonable circumstances. There should not be instances of creditors demanding proof of medical conditions such as mental health conditions before even allowing the initial breathing space period.

We have suggested in the vulnerability section below that breathing space should go beyond the set guidelines where there is evidence of vulnerability. This should be set out in the code provisions.
Common Financial Statement (CFS)

We welcome the continued support of the Lending Code for the principles and practice of the Common Financial Statement (CFS). We are currently awaiting the outcome of the Money Advice Service consultation on the Standard Financial Statement which will evolve and develop the CFS into the future. We can only comment on the Lending Code as it relates to the current CFS.

Section 9.206 states as follows:

“If a customer works with a debt-counselling organisation to complete a CFS, in support of a debt management plan, the subscriber should accept the CFS 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 should only be challenged by the subscriber if it has reasonable cause to believe that the customer’s income and expenditure figures may be incomplete or inaccurate.”

We continue to argue that a CFS offer should be accepted automatically and would suggest as a consequence that this wording needs strengthening. The current wording says that firms “should accept the CFS as the basis for pro-rata distribution amongst creditors” and “should only be challenged if has reasonable cause…” We suggest that there is no reason why the content of the income and expenditure statement should be challenged where the figures are in line with the trigger figures. These principles should apply.

We have received reports of lenders asking for a breakdown of the “other” category which is a practice that is not in line with the principles of the CFS. The “other” category has its own trigger figure which should not need to be queried. However, we accept that creditors may be confusing “other” with “miscellaneous” and the category will be looked at again for the Single Financial Statement project.

Payments on unsecured debt payment plans should be made pro-rata. The code currently states at section 9.208:

“Alternative means of calculating the distribution of available income by the customer or their adviser may be agreed on a case-by-case basis.”

We are concerned that this may allow some lenders to set unacceptable minimum payment levels for their own debt to avoid a lower pro-rata offer or to fit in with their own systems. This clause in the code needs to be reviewed as some debt agencies have reported feeling pressured to favour one creditor over another where a minimum payment threshold has been set. Consumers in debt should not be required to make minimum set payments that are not affordable in their circumstances.

Token offers and write-offs

The code has been amended to say that a token offer should be accepted if the customer does not have surplus income, but does have a realistic prospect of improved circumstances. (Section 9: 213.) The code states that accepting a token offer will not represent an agreed repayment plan and will not prevent the lender from registering a default and/or pursuing recovery through normal procedures.
We would only suggest that this could be strengthened to allow acceptance of a token payment to represent an agreed repayment plan. If this was to be allowed as an extension of breathing space for a set period, then consumers who have temporary financial difficulties or whose circumstances are likely to change in the near future could gain assistance. This would remove the implication in the section that the firm is not really accepting a token offer as the firm can carry on with recovery procedures as normal. We have set out these ideas further under “breathing space”.

We are very pleased with the welcome definition of ‘token offer’ within the glossary to the Code which says:

“An offer of payment of a small amount, e.g. £1, made by a customer who has no surplus income available for their ‘non-priority’ creditors and whose circumstances have a realistic prospect of improving so that they will be able to resume full or increased payments.”

We are also pleased to see in the Code that lenders should consider writing off the debt where they consider “the customer’s personal and financial circumstances to be exceptional and unlikely to improve.” (Section 9: 214.) We would not like to see these commitments diluted in any way.

**Debt recovery procedures**

We suggest that the code needs strengthening with a section on debt enforcement which provides guidance to subscribers on what practices are unacceptable. This should reflect CONC rules and guidance and include an expectation on creditors that they will not take disproportionate action against borrowers in respect of arrears or default. This could include applying for an order for sale in the courts or for the borrower to be made bankrupt without exploring alternative proportionate options for recovery.

The current code states at section 9.218 as follows:

“For personal customers, subscribers should follow the creditor standards of the ‘Debt Management Plan Protocol’ (the Protocol) when dealing with protocol-compliant DMP proposals and plans from accredited providers”.

We would support the creditor standards set out in the DMP protocol but would suggest it is worth checking if this is still an ongoing protocol that is being followed by debt management companies and creditors or whether it has been subsumed into the CONC rules. It may be an idea to incorporate the essence of the creditor standards into the code if this is the case.

**Repayment plans**

The code sets out how lenders should assist to develop repayment plans with consumers. We would suggest consideration is given to how creditors should treat their customers who may be affected by the growth in people in employment but with irregular income. This might be due to fluctuating hours or a zero hours contract that means income cannot be guaranteed from one month to the next.

A repayment arrangement should be *regular* but insisting on a particular payment schedule could be just as unfair as insisting on a particular amount.
There can also be a mismatch between expected repayment cycles and time periods and income streams coming into an account. The code needs to recognise and address this issue.

The code should outline what a typical repayment plan should consist of and set out when it is reasonable for a review to take place.

**Interest and charges**

The Code sets out how lenders should treat interest and charges concessions. (Section 9: 224 to 227.) These are useful but we have previously suggested they do not go far enough.

Section 9.224 states as follows:

“Subscribers should consider reducing or stopping interest and charges when a customer evidences that they are in financial difficulties. Such reduction/suspension decision should be based upon an income and expenditure statement indicating that they are unable to make repayments sufficient to meet contractual terms. Where a customer is able to make only token payments, their debt should not increase as a result of interest and charges levied. The assessment should reflect the customer’s lack of ability to pay rather than the stage an account has reached in the arrears cycle or whether they are using free sources of debt advice. Where a firm declines to allow concessions, they should be prepared to explain why to the customer or their adviser if requested to do so.”

We propose that clear guidance setting out when lenders should freeze interest and charges is required. This should be automatically done on evidence of financial difficulties and not just be a “consideration” that lenders make.

We welcome the caveat set out in the code as follows but do not feel that this is sufficiently strong or tightly defined. We would prefer the clarity of the position where the element of judgment as to what an excessive payment period might be is removed.

“It is inappropriate for interest and charges to continue to be taken where the result would be that the repayment period for the customer becomes excessive.”

We welcome section 9.226 that acknowledges concessions should not be arbitrarily withdrawn.

“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. This does not rule out regular reviews and if a customer’s position has improved then interest and charges can be reintroduced.”

We would suggest that more rigorous guidance in relation to interest and charges is needed in cases where offers of payment are increased as a result of a review. Lenders may have a policy of stepping up interest rates and charges as payments increase. This could easily be seen as a disincentive on clients who have increased payments but are knocked back by additional interest instead of encouragement.

We would suggest that the concept of “regular reviews” could benefit from greater definition. We do not think it would be reasonable for a regular review to be carried out so frequently that the activity could constitute unreasonable pressure and cause distress and anxiety for the consumer. We believe the code should set the normal review cycle at twelve months.
Any review at that is set at a more frequent interval than 6 months at the most should be prohibited unless in exceptional circumstances such as the agreement with the consumer that their circumstances are about to change. The section on repayment plans could also benefit from a definition of a regular review. (Section 9.222).

Debt collection agencies and debt sales

We particularly welcome the strengthened section in the existing code on debt collection agencies and debt sales. We are particularly to see the requirement on lenders to pass on all relevant information to the agency or debt purchaser. We are also pleased to see that where a payment arrangement is in place, the new company should not demand a new financial statement or a review of an arrangement that is already in place. It is very important that the company should continue to honour the arrangement.

It is vital that the LSB put stringent monitoring in place to ensure that this section of the code is honoured, that lenders and the debt collection agencies are fully compliant, and that the due diligence provisions for selecting third-party companies is rigorously followed by lenders. This has been an area that has always been of great concern to the debt advice sector as our clients have been impacted by poor practices in this area for many years.

We are particularly keen to expand the commitments in this section so that where mental health or other vulnerability issues are identified, that the debt is neither passed on to a collection agency nor sold on. Currently, under point 10.233 the requirement is limited to not selling a debt where there is evidence of mental health issues. There should also be consideration given to whether it would be feasible not to pass the debt on where an advice agency is already involved.

We still see poor practice by debt collection agencies handling people in arrears. We still see problems relating to the pursuit of statute-barred debt by debt collection agencies who are not following the CONC rules on collections. We still see the inappropriate use of statutory demands by debt collection agencies despite warnings from the OFT. We would like to see improvements in the management of disputed debts. We would like to see clarity in the code on the use of inappropriate collection action such as use of official looking letters, and transparency on the status of the collection agency as to whether it is an in-house firm or an external agency.

Specialist assistance

We suggest that to develop the best practice message in relation to vulnerability that the new code goes further than the current code and require lenders to set up a team to deal with vulnerable customers rather than the current version of the code where lenders are merely “encouraged” to do so.

Vulnerability/debt and mental health

The debt and mental health section of the current code is very valuable. We suggest that this section needs to include a specific requirement that all contact should be specifically suspended if an adviser is working on behalf of someone with mental health issues or if customer verbally informs lender of their mental health problems which goes beyond the provisions in the breathing space section.
Subscribers should have effective policies and processes in place to identify and deal appropriately with vulnerable customers. We would suggest that a more general section entitled “consumer vulnerability” should be incorporated into the new code. This should seek to set out how the code will consider vulnerability and what this encompasses. This should contain the existing section on debt and mental health as a specific area so that the specific requirements in relation to mental health are not lost. This should contain commitments that specifically identify and addresses how lenders should address vulnerability more generally. There should also be a section on mental capacity in the code.

The vulnerability section will need to take account of the forthcoming FCA paper on vulnerability which is due to set out the FCA approach to good practice in this area. The aim should be to develop inclusive practices that meet the needs of all consumers. The code should consider freezing interest, charges and holding action beyond the current breathing space provisions where there are vulnerable circumstances.

Additional provisions for micro-enterprise customers

Breathing space is offered for personal clients, it could also be suitable for small businesses in order that independent debt advice from an agency such as Business Debtline or an accountant be sought. This request should not lead to the automatic withdrawal of facilities in the interim.

30 days may not a sufficient time to seek what can be advice about complex business situations, so we would suggest a guideline period in line with the Late Payment of Commercial Debts legislation (60 days) could be considered.

A small business may be waiting for the payment of an invoice or completion of a contract and the automatic withdrawal of facilities without forbearance could cause a viable business to close. Such provisions in the Lending Code would strengthen a request to hold action either by a small business or by an advice agency or professional acting on their behalf.

Section 10 Complaints

We expect the provisions of the complaints section of the code to be strengthened following the outcome of the current FCA “Improving complaints handling” consultation. It is clear that the provisions will need a substantial reworking in relation to acknowledgement of complaints, and the duties to refer to the Financial Ombudsman Service.

In our submission we have suggested the following rules for both complaint calls and internal helpline numbers.

“We welcome the proposals that all post-contract telephone calls to financial services firms should be charged at no more than a basic rate. We would suggest that there could be an exception for complaints type calls where it would seem fair to provide a free number. We would go further to suggest that any internal helpline numbers supplied by firms for those customers in financial difficulties who wish to discuss their debt problem with their credit provider or their debt collection agency should be made available on a freephone basis.”

Even if this suggestion does not form part of the FCA rules we would suggest the Lending Code includes a section on telephone costs in the complaints section of the code and
consider a requirement on firms to offer a freephone number. We would also welcome a firm statement that internal helplines for people in debt should be offered on a freephone basis. We welcome the new provision under section 10.261 that has now been introduced to ensure that firms can identify and report on the root cause of complaints related to the Lending Code. However, it is not clear how the Lending Standards Board will be able to enforce this provision if it is not complied with by a code subscriber.

We would refer to a previous recommendation by the code reviewer that a new provision be put in place to prohibit subscribers from initiating court proceedings in relation to a debt, if already subject to a complaint to the Financial Ombudsman Service. This was not taken forward. We feel that this should be looked at again in the current review. The code should clearly state that a firm cannot take court action if a complaint has been submitted to the Ombudsman. We do not agree that this will lead to frivolous complaints or misuse by consumers to avoid legitimate court action being taken. It is not possible for a firm to make the call that they will only take court action if they decide the complaint is not “valid” as this pre-judges the Ombudsman decision. In any case, if the complaint is valid, then the firm should be working to resolve the issue themselves.

Section 11 Monitoring

We would suggest that this section could be strengthened to set out what monitoring the Lending Standards Board will carry out and the consequences of non-compliance for code members.

Is the LSB able to take account of complaints data, Financial Ombudsman Service data, FCA regulatory enforcement information and so on? Are the sanctions that the LSB have sufficient and effective?

The LSB should make full use of monitoring mechanisms that engage with consumers about their experiences and measure the customer journey. The results and methodology used should be transparent and made public.

For more information on our response, please contact:

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