

Debt Advice Regulation

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Presentation to THCAN partnership by David Hawkes, Advice UK, May 2016

Background

Until 1/4/14 debt advice was regulated by the OFT under a licensing system; most agencies operated under a group license held by CAB or AdviceUK and had only to make a simple application to one of those bodies. The OFT had limited power and resources.

From 1/4/14 the FCA was given the power to regulate debt advice. The immediate effect on advice agencies was that those organisations previously covered by group licenses could take advantage of a special process to take them into the FCA regime and many did so. AdviceUK members who followed this simple process got 'limited permissions' on the basis that they were not handling client money. It was felt that limited permissions were better because the process for full permissions was very onerous.

Features of the new process

- 3 activities are regulated: debt counselling (advice), debt adjusting (making repayment arrangements, and provide credit information services (explaining the consequences of any chosen debt option).
- Permission does not have to be renewed – it is valid forever unless the organisation withdraws, or the FCA investigates and decides to terminate (e.g. for very poor service) – but this is very unlikely to happen
- There are no group licenses – each organisation must have its own license
- It is a criminal offence to give debt advice if not licensed
- Debt advisers come under the jurisdiction of the Financial Ombudsman Service and must have a publicised complaint procedure.
- FCA authorisation is free and FOS fees will be waived for the first 25 complaints.

Routes to authorisation

1. 'Grandfathering' – the process described above where old group licenses were taken into the new regime
2. For organisations that originally had an individual license, FCA granted 'interim permissions' on 1/4/14 and from 1/10/14 a window opened for full applications. Organisations had to apply within a three-month period. This caused a crisis for Debt Management organisations that had not been and hadn't expected to be licensed –leaving many clients stranded.
3. Full scale new applications for authorisation – applying to new organisations and existing ones who have expanded into debt advice.

FCA Role

1. Deals with authorisations – including new and interim permission applications. They have a forensic approach, significant powers and resources, application is rigorous and onerous.
2. Once organisations are authorised, FCA has a supervisory role.

Issues for the nfp sector

- Understanding the systems and language, coping with the bureaucracy – this places high demands on agencies' resources

- ‘Grandfathered’ organisations don’t realise what a different regime this is. Eventually the FCA will start supervising and this could cause problems. Although there are unlikely to be any major breaches of the rules, agencies will need to know what is involved and to ensure that they are compliant. The rules relating to compliance are found in the FCA Handbook and outlined below.

FCA Handbook

Certain sections of the handbook are of particular application to nfp agencies:

COND – these are the threshold **conditions** that must be satisfied before an agency can apply – they relate to governance and ensuring that it is a fit and proper organisation.

PRIN – these are FCA high level **principles** – agencies must adhere to the letter and spirit of 11 principles (for example, treating customers fairly). Key factors are transparency, integrity etc. Applicant organisations will have to demonstrate why they do things the way they do.

PERG – the most important rules. This is the **perimeter** guidance – setting out which activities are regulated and defining them. Wherever debts are identified and the client advised about them, it comes within the perimeter – but only advice about consumer credit and consumer hire is included – it does not cover advice about rent arrears or similar. Does not include Financial Capability activities such as budgeting advice. Some debt advisers are exempt – e.g. local authorities and solicitors. Of particular importance to NFP is chapter 17 which applies to debt advice

CONC – **consumer credit** rules – CONC8 covers debt advice but agencies are recommended also to look at the introductory chapters. In CONC8, **R** designates a rule, **G** designates guidance. The language is commercial, and FCA have not specified which rules will affect the nfp sector specifically. The FCA see advice as making a recommendation rather than giving options for the client to decide as is more common in the nfp sector.

FCA expect every option to be considered, then that available options will be identified depending on a range of factors, then that the adviser will explain to the client what is and is not suitable, and that this will all be evidenced in the files. The rules do not set out what all the options are but at least 15 can be identified.

The key principle is that all advice must be in the interests of the client. AdviceUK will post guidance on this section on their website in due course.

DISP – **dispute resolution** (handling complaints) – organisations must have a compliant procedure that includes

- Maximum timescale of 8 weeks from complaint to final decision
- Inform client about their right to pursue their complaint to the FOS, and give them the statutory leaflet. Guidance can be found on FCA pages of AdviceUK website and FOS produce a guide for small agencies on what is expected of them.

GABRIEL and CONNECT

This is the system through which agencies must register. It involves completing an annual return online answering 6 questions. AdviceUK have guidance to this process on the members’ only section of their website.

Conclusion

- AdviceUK is preparing a training course for nfps on this issue that will probably be ready for September
- It is likely to be a while until FCA move from registration to oversight, but failure to register through GABRIEL, or the receipt of a complaint may trigger oversight; however nfps are low risk and unlikely to be closely monitored.
- Agencies should go on the FCA register to check that they are registered or not, or can find this out through AdviceUK.

David Hawkes is happy to be called/emailed at AdviceUK for further information or advice, and can provide consultancy for intensive work (but will need to charge for this). david.hawkes@adviceuk.org.uk

