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Dear CEO/Director,

Implementing the Consumer Duty for the Debt Advice Portfolio

The Consumer Duty is a significant shift in our expectations of firms. It introduces a more outcomes-focused approach to consumer protection and sets higher expectations for the standard of care that firms give customers.

We are sending this letter to firms whose primary business model is debt advice to help them implement and embed the Duty effectively. This letter sets out:

- A reminder of the implementation timeline, key elements of the Duty and how it applies to firms in the debt advice portfolio
- Our expectations for how firms should embed the Duty, including how firms evidence the outcomes their customers are getting
- Feedback from our recent review of firms' implementation plans
- Our approach to supervising the Duty and planned next steps

We expect the Consumer Duty to be a top priority for you personally. We want good outcomes for customers to be at the heart of firms' strategies and business objectives, and leaders have a key role to play here. Firms' Boards and senior management should embed the interests of customers into the culture and purpose of the firm.

We sent you a Portfolio Strategy letter in June 2022 that set out our view of the key risks of harm that Debt Advice firms pose to their customers and the markets in which they operate. In that letter we set out our portfolio strategy to ensure firms understand our focus, expectations, and related actions, so they can better manage the risks and reduce potential harm to consumers.

Following this, we recognise that the new Consumer Duty also comes at a challenging time for consumers and the wider economy. Accordingly, in Annex 1 and Annex 2 of this letter we:

- Set out our expectations for Debt Advice firms to meet the requirements of the Duty (Annex 1)
- Highlight issues that arise from the rising cost-of-living (Annex 2)
- Provide an update on our assessment of the key harms that Debt Advice firms face in regard to their customers and the market (Annex 2).

Your timeline for introducing the Duty

In July 2022, we published final rules and guidance for firms, and set out the following timeline for firms to implement the Duty:

- By the end of October 2022 firms' boards or management bodies should have agreed their plans for implementing the Duty
- By the end of April 2023 manufacturers should have completed all reviews necessary to meet the outcome rules and shared necessary information with their distributors
- The Duty comes into force on 31 July 2023 for new and existing products or services that are open to sale or renewal
- On 31 July 2024 the Duty comes into force for closed products or services.

How the Duty applies to firms in the Debt Advice Portfolio

The Duty applies to products and services offered to retail customers, and to all firms who determine or have a material influence over customer outcomes - not just those with a direct customer relationship. We've set out some more information and examples about how the Duty applies to firms in the Debt Advice Portfolio in Annex 1 to this letter.

This includes consideration as to whether your debt counselling and/or debt adjusting products and/or services are designed to meet the needs of your intended customers, provide fair value, support customer understanding, and support customers' needs throughout the lifespan of the product or service.

Debt advice and debt solution providers are likely to see much greater demand for their services from customers in more complex and challenging circumstances given the rising cost of living.

Overview of the requirements of the Duty

The Finalised Guidance we published in July provides firms with a full explanation of the requirements of the Duty, including many helpful examples of good and poor practice.

The Duty requires firms to act to deliver good outcomes for retail customers. Firms must act in good faith towards customers, avoid causing them foreseeable harm, and enable and support them to pursue their financial objectives. Firms should consider the diverse needs of their customers – including those with characteristics of vulnerability (see chapters 4-5 of the Guidance).

The Duty also introduces new rules and guidance to ensure that:

- **Products and services:** are designed to meet the needs, characteristics, and objectives of a specified target market (chapter 6)
- **Price and value:** Products and services provide fair value with a reasonable relationship between the price consumers pay and the benefit they receive (chapter 7)
- **Consumer understanding:** Firms communicate in way that supports consumer understanding and equips consumers to make effective, timely and properly informed decisions (chapter 8)
- **Consumer support:** Firms provide support that meets consumers' needs throughout the life of the product or service (chapter 9)

A key part of the Duty is that firms can define, monitor, evidence and stand behind the outcomes their customers are experiencing (chapter 10). This monitoring must enable firms to identify where customers, or groups of customers, are experiencing poor outcomes, and where this is the case firms must take appropriate action to rectify the situation.

The Duty does not have a retrospective effect and does not apply to past actions by firms. However, the Duty applies, on a forward-looking basis, to firms' ongoing work for existing customers (chapter 3.10 of FG22/5 non-Handbook Guidance).

Our expectations for how firms should embed the Duty in the Debt Advice Portfolio

Whilst you should consider all elements of the Duty, Annex 2 of this letter outlines some initial areas where particular focus is needed. As well as the rising costs-of-living, we set out our updated view on the key drivers of harm in the sector and where the Duty may be relevant in addressing these harms.

The harms we identify as relevant to this portfolio cover:

- Ensuring advice or solutions offered are appropriate in light of customers' changing circumstances
- Planning for operational and financial resilience
- Helping customers in complex or vulnerable circumstances
- Use of technology, automation and 'robo-advice'
- Providing information to customers and keeping adequate records
- Countering 'sludge' practices
- Financial promotions and co-operating with the FCA

We ask firms to pay particular attention to the detail set out in Annex 1 and 2 as these outline our renewed focus in collaboration with the Duty taking effect.

Feedback from our review of implementation plans

On 25 January we published feedback for firms on the implementation plans we have reviewed. This feedback contains examples of good practice, and areas for improvement, which will be useful for all firms to review as they implement the Duty.

Many of the plans we reviewed showed that firms have understood and embraced the shift to focus on consumer outcomes, established extensive programmes of work to embed the Duty, and are engaging with the substantive requirements.

However, we did also identify plans that suggested some firms may be further behind in their thinking and planning for the Duty. This brings a risk that they may not be ready in time, or they may struggle to embed the Duty effectively throughout their business.

We have identified three key areas where firms should particularly focus their attention during the second half of the implementation period (to 31 July 2023):

- **Effective prioritisation:** We saw some plans where it was not clear what the basis was for prioritising some implementation work ahead of other aspects. Firms should make sure they are prioritising appropriately, focusing on reducing the risk of poor consumer outcomes and assessing where they are likely to be furthest away from the requirements of the Duty.

- **Embedding the substantive requirements:** We saw some plans that suggested firms may have considered the requirements superficially or are over-confident that their existing policies and processes will be adequate. We urge firms to carefully consider the substantive requirements of the Duty, so that when they are reviewing their products and services, communications and customer journeys, they identify and make the changes needed to meet the new standards.

- **Working with other firms:** To implement the Duty on time, many firms need to work and share information with other firms in the distribution chain. However, some firms may need to accelerate their work on this important aspect of implementation.

As they oversee the implementation of the Duty, firms' boards and management bodies will want to particularly focus and provide challenge in the three areas above, and on the other issues highlighted in our feedback.

Our supervisory approach and next steps

The Consumer Duty is a cornerstone of our three-year strategy, and a key element of our work to set and test higher standards between now and 2025. It is being prioritised at every level of the FCA, from the board down, and it will drive our supervision strategies and prioritisation.

As part of this work, we are developing a strategy for the debt advice portfolio to embed the Duty in our Supervision work and tackle key harms, as well as metrics to measure the impact of the Duty in the sector.

Debt advice firms of all sizes in the sector should be prepared to discuss the Consumer Duty with us and to provide us with information on the reviews and assessments they have conducted as part of the embedding process. These additional engagements will be carried out through a variety of means, likely to include bilateral engagement, continued close engagement with the trade bodies, and industry events.

We will continue our work to support firms' embedding activities in the run-up to the July 2023 implementation deadline. Our programme of communications on the Duty will continue, with further events and updates to our dedicated webpages.

We are working with an external research agency that will soon be sending a short survey to a sample of firms. This anonymised survey will help us understand the progress firms are making in implementing the Duty and will inform our ongoing communications to firms.

For more information:

- Read our Finalised Guidance (FG22/5)
- Consider our feedback on our review of implementation plans
- Visit our Consumer Duty homepage where you will find additional information about the Consumer Duty, on-demand webinars and podcasts, and the option to sign up for email updates
- If you have any questions, you can email us at firm.queries@fca.org.uk

Contact

If you have any queries regarding the content of this letter, please contact us at firm.queries@fca.org.uk. This is the primary point of contact for your firm's day-to-day interactions with the FCA. Further details on how to reach us are on our website.

We recognise there may be instances when your firm faces urgent issues of strategic importance. If this happens, please contact Head of Department, Jonathan Phelan on 020 7066 1470, or Jonathan.Phelan@fca.org.uk, if not available, Sunil Thakar, Manager, on 020 7066 5996 or Sunil.Thakar@fca.org.uk.

Yours sincerely

Roma Pearson

Director, Consumer Finance

Supervision, Policy & Competition Division

Annex 1 – How the Duty applies to firms in your Portfolio

How the Duty applies to Debt Advice firms

Taking into account the harms we identified in the June 2022 Portfolio Strategy letter, we expect to see firms implementing the Duty with particular focus on the following issues:

- **Debt counselling and debt adjusting products and services are designed to meet the needs, characteristics, and objectives, of your intended customers.** This may include signposting customers to other organisations if you cannot do this, removing staff rewards and incentives or commercial incentives likely to cause conflicts of interest, and designing debt management plans, and other solutions, with effective procedures for regular or reactive review.

- **Debt counselling and debt adjusting products and services provide fair value.** Firms must assess whether fees charged have a reasonable relationship with the benefit to the consumer, that they will not lead to foreseeable consumer harm; and this must be regularly reviewed. The value of the advice or solution provided should not be compromised by unmanaged commercial or staff incentives. The scope of your services should be clear so that it is possible to determine whether services provide fair value. Fair value is about more than just price. The Duty aims to tackle factors that can result in products or services which are unfair or poor value, such as unsuitable features that can lead to foreseeable harm or frustrate the customer's use of the product or service, or poor communications and consumer support.

- **Firms communicate in way that supports consumer understanding and equips consumers to make effective, timely, and properly informed, decisions.** Firms must tailor communications to meet the needs of the customers they are intended for; and test and monitor whether the communications deliver good outcomes. This might include providing customers with information on the scope of the service, confirmation of advice received, any commission firms receive in connection with the services they provide to the customer, and information about other relevant solutions or independent organisations that may be able to assist the customer. Financial Promotions should be clear, fair and not misleading, contain accurate and balanced information about different options available and should not imply the organisation is a government body or a charity when it is not.

- **Firms provide support that meets consumers' needs throughout the life of the product or service.** This might include ensuring there are sufficient staff members with the knowledge, training, and experience, to meet the changing needs of the customer, identify vulnerabilities, and handle them appropriately. It is also important that complaint procedures are prominent, easy to understand,

and sufficiently resourced; and that internal records are sufficient for both internal and external auditing.

All aspects of the Duty are relevant to the Debt Advice portfolio regardless of whether you manufacture or distribute debt counselling or debt adjusting services and/or products.

Annex 2 – Key issues for firms to consider

1. The Cost-of-Living Crisis

We also outline our expectations of firms in the portfolio in relation to the risks arising from the current cost-of-living crisis. With the increasing risk of financial hardship and the difficulties consumers face in repaying debt, it is particularly important that consumers get appropriate advice the first time they seek it, understand the advice given, and are able to repay debts in a sustainable way, or seek debt relief if they are eligible. We also want to ensure that firms have plans in place to address any increase in demand, without impacting the quality of service, while remaining operationally resilient.

The rising cost-of-living will be having significant effects on the budgets of UK consumers, putting pressure on their disposable incomes and pushing more into financial difficulty.

Inflation has been rising and this will be felt most acutely amongst the poorest households. According to our Financial Lives Survey, just over a quarter (27%) of the UK population have low financial resilience, a figure likely to increase over the coming months.

Debt advice and debt solution providers are likely to see much greater demand for their services, from customers in more complex and challenging circumstances.

Our expectations for how debt advice firms respond to the rising cost-of-living are aligned with the work they will need to do to implement the Duty. The matters discussed in this letter, such as providing information consumers can understand, supporting customers to make good financial decisions, and providing products and services that lead to good consumer outcomes, are very much in line with the practices we want to see firms adopt under the Duty.

2. Customers' changing circumstances

Increasing numbers of consumers are presenting with negative disposable incomes and more complex circumstances, making the provision of advice and solutions more challenging. The Money and Pensions Service ("MaPS") recently concluded a call for evidence on debt advice clients with negative budgets.

We anticipate this issue will increasingly impact a number of existing customers as their material circumstances continue to deteriorate. For example, the debt advice rules in chapter 8 of the Consumer Credit Sourcebook in the FCA Handbook ('CONC 8') require firms to regularly monitor and review the financial position and circumstances of the customer. These reviews should have regard to the customer's best interests and be based on a sufficiently full assessment of their financial circumstances.

We consider that the design of effective processes for reviewing debt management plans to be an important step towards the product and services outcome of the Duty. The Duty's cross cutting rules also require that you act in good faith, avoid causing foreseeable harm, and support the customer to pursue their financial objectives.

In some cases, the customer's existing debt management plan may no longer be suitable. You would need to consider whether adjustments to the debt management plan should be made, or a new solution found, to take into account relevant changes in the financial position and circumstances of the customer.

All advice given and action taken by a firm (or its agent or appointed representative) must have regard to the customer's best interests, and be appropriate to their individual circumstances, including a sufficiently full assessment of their financial circumstances.

Income maximisation (where the firm identifies potential additional income, such as unclaimed benefits) and budgeting advice are particularly important in this context. These services may also help customers pursue their financial objectives, as outlined in the Duty. FCA-authorised debt advice providers can also apply for consumers to enter the Government's Debt Respite Scheme (please see the "Helping customers in complex or vulnerable circumstances" section of this letter for more information).

3. Planning for Operational and Financial Resilience

We are concerned with the possibility that the increasing numbers of people in financial difficulty seeking debt advice may test the resilience of firms' operations. We expect firms to anticipate and plan for this scenario.

The likelihood of lower disposable incomes may also impact the viability of customers' existing debt management plans. Firms reliant on income through debt management plans and/or Fair Share funding may wish to anticipate and plan for how they would maintain financial and operational resilience in circumstances where sources of income for the firm are constrained due to the economic pressures.

Firms must comply with the prudential resource requirements at all times. If you are unsure whether this will continue to be the case, you should consider whether a notification in line with chapter 15 of the FCA Handbook's Supervision Manual ('SUP15') is needed. You can do so by completing and sending us this notification form or contacting us via the details provided later in this letter.

4. Helping customers in Complex or Vulnerable Circumstances

We know that debt advice providers and their advisors typically have a lot of experience dealing with customers in vulnerable circumstances and will have developed good quality procedures for dealing with these customers.

In our regular engagements with firms, some have reported increasing complexity and vulnerability in customers' needs. In February 2021, we published our FG21/1 Guidance for firms on the fair treatment of vulnerable customers. This guidance sets out what firms should do to comply with their obligations under the Principles and ensure they treat customers in vulnerable circumstances fairly. The Duty's consumer support outcome reinforces the importance of identifying vulnerability in potential customers and treating them appropriately.

The Government's Debt Respite Scheme ("Breathing Space") also provides a form of customer support through specialised mental health crisis breathing space. It is available to customers receiving mental health crisis treatment, lasting the duration of the person's mental health crisis treatment, plus 30 days. Please consider whether this tool may help your customers achieve their financial objectives.

Reports of Illegal Money Lending are increasing. Some estimates indicate that over one million households may be accessing illegal loans and the current economic conditions may to lead more consumers to be at risk from illegal lenders. Such lending takes different forms. If a customer indicates they have loans from friends and family, for example, we expect firms to probe this sensitively and appropriately.

The Illegal Money Lending Teams across the four nations offer free, bespoke training, materials, and support, for firms likely to encounter instances of illegal money lending. The training may help your firm's staff understand how loan sharks operate, who is at risk of being exploited, and where victims can go for help. More information about the support offered by Illegal Money Lending Teams can be found on the website here.

5. Use of technology, automation and 'robo-advice'

Increasingly, firms are looking to automate aspects of the debt advice journey through online and digital platforms. MaPS has launched its own Debt Advice White Label Tool that supports aspects of the debt advice process such as collecting and analysing customer income and expenditure. MaPS is offering this tool free-of-charge to FCA-authorised debt advice firms.

Use of digital platforms in the debt advice journey can represent a substantial change in the services offered to consumers. Where you make such a change to your offering in future, you should consider whether to notify us in accordance with chapter 15 of the

FCA Handbook's Supervision Manual ('SUP15') and particularly SUP 15.3.1 R. You can do this by completing and sending us this notification form or contacting us via the details at the end of this letter.

Use of digital platforms can help firms to address capacity constraints and provide an accessible platform for consumers. However, we have seen some examples where the platforms have failed to take into account the individual circumstances of the customer when providing debt advice and subsequently fail to recommend suitable solutions. Even when advice is automated or given in a digital context, firms must ensure that their advice and actions are appropriate to the individual circumstances of the customer and has regard to their best interests under CONC 8. Failing to do so could also risk falling short of the Duty's cross-cutting rules, as well as its products and services outcome.

Digital platforms, particularly when combined with Open Banking technology, can be useful in collecting income and expenditure data, carrying out an assessment of a customer's circumstances and freeing up advisers' time. But it is important for firms to have checks and controls in place to appropriately interrogate the information provided. Firms should also consider reminding customers of the importance of providing accurate information, as this will have a significant bearing on the advice they receive and ensure that customers understand how the information is used.

We remind firms that are exploring how to integrate digital and automated advice platforms of the need to be fully compliant at all times with all relevant aspects of CONC 8 and the Duty.

We recognise the role technology can play in driving competition and innovation in this market and providing wider access to financial services. The FCA's Innovation Hub may be able to help firms that are developing innovative propositions in the interests of consumers. It is keen to support the firms in this portfolio that are doing so. We encourage firms that are seeking to innovate in this sector to contact our Innovation services for help where they may benefit from some regulatory assistance.

6. Providing information to customers and keeping adequate records

Our research shows that, currently, only approximately three in five (61%) borrowers in financial difficulty who sought debt advice, or used a debt management service, received a written summary of that advice. Of those that did, 89% used this written summary. Communicating debt advice in a durable medium seems extremely valuable yet appears to be under-provided.

In addition to providing advice in a durable medium in the circumstances set out in our rules, firms should also consider whether it is appropriate to do so in other circumstances, such as where complex advice is given.

Where a firm provides a record of advice to a customer it should ensure that it includes sufficient information about the available options identified as suitable for that customer's needs. However, an advice summary should not be unnecessarily complex and inaccessible as this can risk the customer disengaging with the advice or provision of a debt solution that is in their interests. For example, we understand that some firms unnecessarily record and share every detail of the exchange between an advisor and their customer. As outlined in the FG22/5 non-Handbook Guidance, we want customers to be given the information they need, at the right time, and presented in a way they can understand. The provision of advice in a durable medium is becoming increasingly important as more customers present with complex circumstances and is relevant to fulfilling the customer understanding outcome of the Duty.

If you use templates to record advice in a durable medium, please ensure that you are satisfied that the template facilitates customer understanding and enables advisors to reflect the customer's individual circumstances, and the specific advice given to them.

With more customers presenting with decreasing or negative disposable incomes and complex circumstances, it is ever more important to keep adequate records. All firms must keep adequate records of things that are subject to regulatory requirements (see SYSC 3.2.21). Accurate, and well-organised, record-keeping helps firms monitor and improve staff capability and training, compliance and business procedures, and complaints handling. The acting in good faith, avoiding foreseeable harm, product governance, and consumer support, aspects of the Duty are also relevant here.

7. Countering 'sludge' practices

'Sludge' practices can make it more difficult for a customer to exit a product or service than to enter into one. Among other things, the Duty is designed to tackle these practices as they prevent, or hinder, consumers from pursuing their financial objectives. In the Debt Advice sector this could include ineffective and delayed reviews of existing customer debt management plans, failing to account for a customer's changing circumstances or ability to repay their debts, and failing to make appropriate referrals to free debt advice services.

If you also encounter resistance from lenders and other creditors, when communicating on behalf of a consumer, please report it to us. We will work with our regulatory partners to help address the situation.

We work closely with key members of the UK Regulatory Network to better identify and tackle barriers to consumer engagement to help improve the experience of consumers in financial difficulty helping them get the right help and support at the right time.

8. Financial promotions and co-operating with the FCA

As the rising cost-of-living pushes consumers into more financial difficulties, we are concerned they may be targeted by unauthorised providers of debt advice or other firms giving inappropriate debt advice or engaging in misleading practices, particularly online.

If you are concerned that a firm is conducting a regulated activity without the appropriate FCA authorisation (and it is not exempt from requiring it or relying on an exclusion), you can report these concerns to us using the form found here.

The regulated activities of debt counselling and debt adjusting are set out in the Regulated Activities Order (RAO). Further guidance is available in the Perimeter Guidance (PERG) Manual of the FCA Handbook (PERG 2.7.8B and 2.7.8C). Chapter 17 of PERG also has more detailed guidance on the regulated activities and practices that do, and do not, constitute debt counselling.

FCA-authorised firms must ensure their consumer credit related financial promotions comply with the relevant rules in Chapter 3 of the Consumer Credit Sourcebook (‘CONC 3’). If you have concerns about the promotions of an FCA authorised firm, you can report these using the form found here. Concerns relating to advertising by a non-FCA-authorised firm can be reported to the Advertising Standards Authority ('ASA'). There is more information about this here.