

BIRMINGHAM LAW SOCIETY



Birmingham
Law Society

**SOLICITORS REGULATION AUTHORITY REGULATION OF
CONSUMER CREDIT ACTIVITIES: OCTOBER 2014**

12 December 2014

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[In this response the Birmingham Law Society ('BLS') does not deal with issue of whether the SRA is able to divest itself from regulating the solicitors' profession in these circumstances. It is understood that a joint legal advice is being sought by TLS and the SRA on this and other issues raised in the consultation. BLS would wish to reserve its right to comment further on this particular point in the light of any advice received should it be considered desirable]

Preliminary observations

- Mainstream consumer credit work is conducted by a large proportion of the profession either as a specialist area of expertise in collecting debts or as an important adjunct to other work conducted on behalf of clients;
- The scope of the FCA's regime is wide (see para 8 of the Consultation) and would affect almost the entire profession save perhaps for firms practising in a few niche areas;
- Should the proposal come into being there are likely to be far reaching consequences some of which can only be guessed at and involving public policy and access to justice issues (infra);
- Unless it is unavoidable, it is undesirable, inefficient and expensive to have the profession regulated by more than one body.

Consultation questions

- 1. Do you agree with the proposal that firms carrying on any regulated consumer credit activities should be required to seek authorisation directly from the FCA and not be able to rely on the Part 20 exemption set out in FSMA?**

No. What is proposed would impose unnecessary costs and unnecessary regulatory burdens on firms.

The principle justification for the proposal appears to be that there is a philosophical difference between a rules based regulatory system operated by the FCA and the move by the SRA to a more outcomes based system and that the two are irreconcilable. This is an over-simplification. The SRA's own handbook is a mixture of the two. It is accepted that the FCA's Consumer Credit Sourcebook (CONC) sets out detailed obligations. However, at the outset at CONC1.1.4 emphasis is laid on the underlying principles to be

applied by businesses engaged in consumer credit activities¹. Integrity, fairness, openness and so on are all to be found there which parallel the core values of the profession and by which their activities are judged under the existing SRA regulatory regime. In the response to Q2 (infra) it will be seen how synergy is achieved already through the two systems working in tandem.

2. If you do not agree with the proposal, please offer any alternative suggestions for ensuring that the SRA's regulatory arrangements in relation to consumer credit activities are targeted, proportionate and do not result in the incorporation of the FCA's CONC and do not impose unnecessary costs and regulatory burdens on firms.

BLS does not consider that it is necessary to incorporate the FCA's CONC into the SRA's Handbook for the following reasons:

- Equivalent consumer protection for vulnerable debtors already exists in the SRA Handbook, and indirectly via CONC 1.2.2R for debt collection activity, so solicitors do not need direct regulation where Part 20 of the FSMA could apply;

¹The Principles for Businesses: a reminder

CONC 1.1.4

01/04/2014

FCA

The Principles for Businesses (PRIN) apply as a whole to firms with respect to credit-related regulated activities and ancillary activities in relation to credit-related regulated activities (see PRIN 3). In carrying on their activities, firms should pay particular attention to their obligations under:

- (1) Principle 1 (a firm must conduct its business with integrity);
- (2) Principle 2 (a firm must conduct its business with due skill, care and diligence);
- (3) Principle 3 (a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems);
- (4) Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly);
- (5) Principle 7 (a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading);
- (6) Principle 9 (a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment);
- (7) Principle 10 (a firm must arrange adequate protection for clients' assets when it is responsible for them); and
- (8) Principle 11 (a firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice).

- CONC 1.2.2R states that it is the responsibility of FCA regulated firms to ensure that not only employees and agents comply with CONC but that they also take reasonable steps to ensure that other persons acting on their behalf also comply. The FCA can regulate and enforce compliance with CONC by law firms carrying on regulated debt collection work indirectly by this provision to ensure consumer protection;
- CONC 14.1.2 (5) says that the FCA regulated firm accepts full responsibility for the conduct of the individual when the individual is acting on the firm's behalf in the course of the firm's business. The FCA can regulate debt activity outsourced to solicitors indirectly by this provision;
- FCA regulated clients require that the solicitors they instruct to undertake regulated debt activity comply with CONC and should be ensuring compliance by regular audit;
- Chapter 1 Outcome (1.2) of the SRA Code of Conduct 2011 requires that solicitors provide services to clients in a manner which protects their interests in their matter, subject to the proper administration of justice. Solicitors must provide services in a manner which is compliant with CONC to enable the FCA regulated client to discharge their own obligations under CONC 1.2.2 R, as failure to do so could harm the client's interests;
- Chapter 1 Outcome (1.5) of the SRA Code of Conduct 2011 requires that solicitors provide a service to clients, which is competent, delivered in a timely manner and takes account of your clients' needs and circumstances. The client instructing solicitors to undertake regulated debt activity will need to be satisfied that the firm of solicitors will comply with CONC so that they themselves comply with CONC 1.2.2 R;
- Chapter 11 of the SRA Code of Conduct 2011 sets out how solicitors should behave when dealing with third parties and the mandatory outcomes in that Chapter mirror the outcomes of the CONC in terms of not taking unfair advantage or demanding anything for yourself or your client which is not legally recoverable;
- The SRA Principles embody the FCA's high level Principles for Business and to apply these again via direct FCA regulation is unnecessary (see Appendix);
- Debtors have recourse to complain to the FCA about a solicitor's conduct, which can be escalated to the SRA. The profession is already heavily regulated and depends upon its reputation. It is a commercial reality that solicitors will lose

business from their FCA regulated clients if they fail to comply with CONC and therefore will comply without being directly regulated;

- The exclusion for contentious business in FSMA (Regulated Activities) (Amendment) (No 2) Order 2013 Article 39K could and should be extended to include pre-issue work whether or not proceedings are issued². PERG 2.8.7C could be amended to extend the definition of 'contentious business'. The definition in the Solicitors Act 1974 at section 87(1) was narrowly defined for the purposes of costs in contentious proceedings and this definition is inappropriate for the purpose of this legislation. 'Contentious business', narrowly defined, means that all pre-issue work is not considered to be 'contentious' until and unless proceedings are issued. It is in the public interest to settle without the need to issue proceedings, hence the emphasis in the Civil Procedure Rules on alternative dispute resolution. The CONC Rules say that court proceedings should be a last resort. The impact of the narrow definition will be to force firms to issue proceedings if they are not FCA authorised in order to rely on the exclusion, which runs against public policy and public interest.

3. Do you have any views about our assessment of the impact of these changes and, are there any impacts, available data or evidence that we should consider in finalising our impact assessment?

The following are examples which highlight where there will be an impact. There will be others.

- Firms undertaking a small amount of consumer credit work for a particular client now may lose all litigation work from that client if they choose not to become directly authorised by the FCA and have to turn work away;
- Many firms will choose not to become FCA authorised because of the burden and the expense of additional regulation which will further limit their source of business and range of legal services offered to the public. Firms acting for debtors looking to refinance/restructure their debts may decide that the additional cost and burden will outweigh the commercial benefit of doing the work, leaving these clients with no option but to go to non-solicitor debt management firms and loan sharks or to the already overburdened not-for-profit sector; the narrow definition of 'contentious' adopted from the Solicitors Act 1974 will mean that firms will be under pressure to issue proceedings with little or no attempt to reach an agreement with debtors so that they can rely on the exemption, which would not

² This will require a legislative change

be in the public interest. The impact of this narrow definition is contrary to the spirit of CONC and the 'treating customers fairly principle' which says that creditors should not rush into court proceedings if people cannot pay. The impact is contrary to the Civil Procedure Rules, Practice Direction on Pre-Action Conduct paragraph 8.1 which says that 'Starting proceedings should be a step of last resort...' and alternative dispute resolution should be attempted first;

- Solicitors are willing to accept payment of their own fees by instalments in order to assist their clients. With the reduction in the availability of public funding and general reduction in legal firms as a result of the recession, the facility makes access to justice more affordable. As 'financial accommodation' must contain the three restrictive elements to be exempt (no more than four instalments, in a payment term of no more than 12 months and without interest or charges) firms will not be able to offer the same flexibility to clients. Many firms allow clients to pay monthly and they will not be able to offer this in future without becoming authorised. More firms will need to issue proceedings to recover their costs which, again, runs counter to public interest;
- Despite the additional financial strain this will put on firms, many who specialise in consumer credit activity will have to obtain FCA authorisation in order to continue in business. The impact may be that some firms could run into financial difficulty and have to close down. Some firms may be unsuccessful in their application for FCA authorisation and have to completely change their business model or close down;
- If the SRA removes the separate business rule, solicitors' firms may start hiving off their consumer credit debt activity work to a separate company requiring FCA authorisation, so that the main practice can retain exempt professional firm status for the purposes of Part 20 of the FSMA.

4. To what extent are firms providing consumer credit services to clients which would mean that they would need to seek authorisation from the FCA? Are consumer credit arrangements more likely to be offered for particular types of work?

- Most firms will allow clients to pay by instalments which would not benefit from the financial accommodation exemption, from sole practitioner through to international law firm;
- Debt related consumer credit activities, such as debt adjusting, debt counselling and debt collecting, is undertaken by firms of all types and sizes and in all parts of England & Wales. Credit information services are offered by those firms acting

for debtors in the provision of debt counselling and adjusting which might arise out of litigation or matrimonial work, for instance;

- Debt collection is likely to be undertaken by any firm of any size undertaking litigation unless they specialise in a particular area which would exclude debt recovery work;
- Debt counselling, debt adjusting and credit information services is likely to be offered by any high street, full service, practice as and when required;
- Consumer credit services may be a small element of a firm's work which complement other services provided, in contrast to those firms which are completely reliant on consumer credit services.

5. To what extent are firms providing other FSMA regulated activities which would mean that they would need to seek authorisation from the FCA?

- The number of SRA-regulated firms requiring FCA authorisation is very small;
- If Part 20 of the FSMA continues to be available as it is now, with the addition of regulated debt activity, the majority of other work undertaken will be general insurance mediation, incidental transfer of shares and other investment interests in property transactions, corporate, matrimonial, and probate and trust work;
- The need to seek direct FCA authorisation will be limited to those firms who specialise in the delivery of financial services and/or regulated debt activity.
- In the absence of Part 20 there will be an impact across almost all areas of work, particularly concerning financial services and insurance mediation. Insurance would present a particular problem. Examples are endless but would include warranty insurance in corporate, ATE insurance in PI, missing beneficiary insurance in probate and various property insurance in conveyancing.

6. If the proposal is implemented, will firms continue to provide consumer credit services, regulated by the FCA?

- BLS considers that many high street, full service, firms offering consumer credit services will be afraid to commit to the additional expense and regulatory burden of FCA regulation and they will stop offering the services to their clients;

- Many large firms offering debt collecting services to clients as a complementary part of a larger retainer for other legal work will choose not to seek FCA regulation because of the impact of the additional burden, time and cost of regulation on the work which would formally have benefitted from the Part 20 FSMA exemption;
- BLS does not consider that firms will seek FCA authorisation so that they can offer credit to their clients for the payment of fees although limited permission can be obtained for this activity which will be less onerous. Even with limited permission, however, a firm will lose exempt professional firm status and the benefit of Part 20 of the FSMA for any work which is undertaken incidentally at the moment. Without the Part 20 exemption the activity might require full FCA authorisation in any event;
- Firms specialising in consumer credit activity will have to obtain FCA authorisation in order to continue in business and are likely to have applied already.

Concluding Comment

In the course of this response the Society has shown how the proposed change in regulation is likely to serve no useful purpose and is not in the public interest. By opting out the result will be a restriction of choice and availability of a vital service to the public and, in particular, the most vulnerable. Of perhaps even wider significance would be the problem associated with giving the struggling client time to pay their solicitor's bill. The proposal is self-serving. The profession has the legitimate expectation that it will be regulated by its own regulatory body when that is possible. Part 20 enables this. The SRA should not walk away from its obligations to the profession.



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EILEEN SCHOFIELD (PRESIDENT)

Dated 12 December 2014

APPENDIX

CONC provision	What it covers	Is it relevant to solicitors?	If relevant, is there an equivalent provision in the SRA Handbook, or elsewhere?	Would the provision need to be incorporated into the SRA Handbook (if the SRA continues to regulate consumer credit activities as a DPB and it is decided this will be achieved by incorporating the relevant provisions of CONC into the SRA Handbook)?
CONC 1	<i>Application and purpose and guidance on financial difficulties</i>			
1.1 and 1.2	Sets out the purpose and application of CONC.	Relevant for solicitors who are FCA-authorized and required to comply with CONC, but not otherwise.	The Introduction to the SRA Handbook similarly deals with its purpose and application.	No, there would be no need for this – the application of the relevant provisions to solicitors would be self-evident, were they to be incorporated into the SRA Handbook.
1.3	Guidance on possible indicators of financial difficulty, which is relevant in terms of applying later sections of CONC.	Yes, to the extent solicitors are FCA-authorized and required to comply with CONC; in which case, the guidance will have some relevance in terms of the application of CONC 7 (see below). However, the indicators (such as outstanding CCJs, consecutive failure to meet repayments) are a matter of common sense, particularly for solicitors dealing with debt recovery work.	No.	Unlikely – however, it could be incorporated if this was thought necessary alongside the relevant provisions of CONC 7 (see below).
CONC 2	<i>Conduct of business standards: general</i>			
2.2	<p>General principles for credit-related activity; namely:</p> <ul style="list-style-type: none"> - The need for firms to treat their customers fairly and examples of behaviour likely to contravene this (such as targeting customers with regulated credit agreements and subjecting them to high-pressure selling). 	The principle of treating customers fairly is relevant. However, the examples of behaviour likely to contravene this are not particularly relevant to solicitors, who would be unlikely to be involved in targeting customers with credit agreements or subjecting them to high-pressure selling or coercion.	Yes, the SRA Code of Conduct requires that solicitors treat clients fairly (O(1.1)), and sets out indicative behaviours which may show this outcome has been achieved. Here and elsewhere, there is similarity of approach between the SRA Code of Conduct and CONC (i.e. outcomes and guidance as to how they may be achieved); however, the indicative behaviours included in the SRA Code of Conduct are	No, it should not, given the equivalent (and more relevant) provisions of the SRA Handbook.

	<p>Not carrying on credit-related activity under a name likely to mislead customers as to the status of the firm.</p>	<p>Yes, potentially relevant.</p>	<p>much more relevant to solicitors than the guidance set out in CONC 2.2.2G.</p> <p>SRA Principle 4 requires that solicitors act in the best interests of each client.</p> <p>The SRA Code of Conduct provides that solicitors may not harass anyone in the course of their professional dealings (O(2.1)) and may not make unsolicited approaches in person or by telephone to members of the public in order to publicise their firm or another business (O(8.3)).</p> <p>Yes, the SRA Code of Conduct (O(8.4)) requires solicitors to ensure that clients and the public have appropriate information about them, their firm and how they are regulated. O(8.5) also requires that solicitors' letterhead, website and e-mails show the words 'authorised and regulated by the Solicitors Regulation Authority' and either the firm's registered name and number if it is an LLP or company or, if the firm is a partnership or sole practitioner, the name under which it is licensed/authorised by the SRA and the number allocated to it by the SRA.</p> <p>These outcomes will not be achieved by using a name or description of the firm that includes the word 'solicitor(s)' if none of the managers are solicitors (IB(8.10)), by advertising the firm in a way that suggests</p>	<p>No, it should not, given the provisions of the SRA Code of Conduct ensuring customers are unlikely to be misled as to solicitors' status.</p>
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			services provided by another business are provided by the firm (IB(8.11)) or by producing misleading information concerning the professional status of any manager or employee of the firm (IB(8.12)).	
2.3	Conduct of business for lenders and provision of credit card cheques.	<p>No, solicitors will not be involved in consumer credit lending as part of their business, nor in the provision of credit card cheques.</p> <p>Solicitors may on occasion extend credit to employees on an interest-free basis e.g. as part of a travel scheme or similar. However, this type of credit will generally be exempt under Article 60G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.</p> <p>Solicitors may also, on occasion, allow clients time for payment of invoices. However, this is unlikely to involve entry into regulated consumer credit agreements, at least with any regularity so as to be carried on by way of business. There is no extension of credit where a client is simply slow in paying an invoice. Even where the firm agrees to a delay in payment, there is only a credit agreement where (i) the firm receives consideration for consenting to the delay, as by stipulating for interest; (ii) this is done by way of a binding contractual arrangement, and not simply by way of a non-binding concession or intentional indulgence (see <i>Goode: Consumer Credit Law and Practice</i>). It is anticipated that the</p>	N/A	No.

		vast majority of such arrangements are entered into on a non-binding rather than a contractual basis, and do not involve clients' entry into regulated consumer credit agreements.		
2.4	Conduct standards for lenders and owners (i.e. under hire agreements) in relation to credit references.	No.	N/A	No.
2.5	<p>Conduct of business standards for credit brokers, such as:</p> <ul style="list-style-type: none"> - Explaining key features of credit products where the broker has responsibility for doing so and allowing customers time to read and consider the terms of those agreements. - Ensuring credit products recommended to customers are not unsuitable. - Provisions around data protection e.g. advising the customer of how the firm is using his personal data and giving the customer a clear and simple method for cancelling consent for processing personal data. 	<p>Solicitors could potentially be involved in referring clients to third party lenders. As to whether specific provisions are relevant to solicitors:</p> <p>No, solicitors would not be responsible for providing the 'adequate explanation' under CONC 4, or for obtaining clients' signature to credit agreements. Their involvement is likely to end with referral of the client to a financial services provider.</p> <p>Potentially, although solicitors' involvement is likely to end with the referral to a particular provider, rather than extending to the recommendation of any particular product.</p> <p>Yes, this could potentially be relevant.</p>	<p>N/A</p> <p>Yes, Chapter 6 of the SRA Code of Conduct covers introductions to third parties (e.g. financial services providers), where the outcomes and indicative behaviours include only making introductions in the best interests of the client and making sure the client is in a position to make informed decisions.</p> <p>Yes, all data controllers have to comply with such requirements under the Data Protection 1998 in any event.</p>	<p>No.</p> <p>No, it should not, given the provisions of the SRA Code of Conduct referred to.</p> <p>No, it should not, given the provisions of the Data Protection Act 1998 apply in any event.</p>

	<ul style="list-style-type: none"> - Not engaging in unfair business practices such as visiting customers at inconvenient times and using automated calling systems. 	<p>Solicitors are very unlikely to be involved in the type of practice described.</p>	<p>The SRA Code of Conduct provides that solicitors may not victimise or harass anyone in the course of their professional dealings (O(2.1)) and may not make unsolicited approaches in person or by telephone to members of the public in order to publicise their firm or another business (O(8.3)).</p>	<p>No, it should not.</p>
<p>2.6</p>	<p>Conduct of business for debt counselling, debt adjusting and providing credit information services, such as:</p> <ul style="list-style-type: none"> - Bringing to a customer's attention how their personal data will be used. - Not engaging in unfair business practices, such as pressurising customers, visiting them at times which are unreasonable, canvassing off trade premises e.g. making 	<p>Solicitors could potentially be involved in debt adjusting where they negotiate terms with a creditor on a client's behalf for settlement of the debt due under a regulated credit or hire agreement and/or debt counselling where they advise a client about liquidation of a debt due under such an agreement. They could also be involved in credit information services e.g. where they help a client to amend credit information agency data. As to the relevance of specific provisions:</p> <p>Yes, this could potentially be relevant.</p> <p>Solicitors are very unlikely to be involved in this type of practice.</p>	<p>Yes, all data controllers have to comply with such requirements under the Data Protection Act 1998.</p> <p>The SRA Code of Conduct provides that solicitors may not victimise or harass anyone in the course of their professional dealings (O(2.1)) and may not make</p>	<p>No, it should not, given the provisions of the Data Protection Act 1998 will apply in any event.</p> <p>No, it should not.</p>

	unsolicited visits to customers' homes, requiring customers to make calls on premium rate numbers.		unsolicited approaches in person or by telephone to members of the public in order to publicise their firm or another business (O(8.3)).	
2.7	Distance marketing of financial services.	No, solicitors will not be entering into distance contracts for the provision of financial services.	N/A	No.
2.8	Provision of electronic commerce activity (in respect of 'information society services', or 'any service normally provided for remuneration at a distance, by means of electronic equipment for the processing (including the digital compression) and storage of data at the individual request of a service recipient').	No	N/A	No.
2.9	The giving of unsolicited credit tokens; i.e. cards, vouchers, coupons or similar which are given to an individual by a person who undertakes to supply money, goods or services on credit on their production.	No.	N/A	No.
2.10	Mental capacity guidance to be applied by firms in relation to the decision to grant credit under a regulated credit agreement, or to significantly increase the amount of credit under a regulated credit agreement, or setting a credit limit for running account credit.	No, the guidance only applies in relation to lending.	N/A. although the SRA Code of Conduct provides that solicitors must have regard to clients' mental capacity or other vulnerability, such as incapacity or duress (IB(1.6)).	No.
CONC 3	<i>Financial promotions and communications with customers</i>			
	This relates to financial promotions (i.e. advertisements or other communications that are invitations or inducements to enter into credit agreements, or which relate to credit broking). This includes the overriding requirement for financial promotions to be 'clear, fair and not misleading'.	No, solicitors will not be advertising or inviting/inducing clients to enter into credit agreements as part of their business.	Even so, the SRA Code of Conduct (O(8.1)) provides that publicity in relation to a solicitors' firm or for any other business is accurate and not misleading, and is not likely to diminish the trust the public places in the firm and the provision of legal services. O(8.2) provides that publicity relating to charges is clearly expressed and identifies whether VAT and disbursements are included.	No.

CONC 4	<i>Pre-contractual requirements</i>			
	<p>This applies to firms in relation to consumer credit lending and credit broking and deals with the information lenders are required to provide to customers (themselves or via credit brokers) prior to customers' entry into regulated consumer credit agreements. This covers:</p> <p>Quotations;</p> <p>'Adequate explanation' in relation to the features of credit products;</p> <p>Disclosure of any fee payable by the customer for credit broking and of any commission the firm will receive.</p>	<p>Solicitors will not be involved in providing quotations in respect of prospective credit agreements;</p> <p>Solicitors will not be involved in providing 'adequate explanations'; their involvement is unlikely to extend beyond an initial referral to a financial services provider;</p> <p>Potentially relevant.</p>	<p>N/A</p> <p>N/A</p> <p>Yes. Under the SRA Code of Conduct (O(1.13)) clients must receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter. IB(1.14) provides that solicitors' fees should be clearly explained. O(1.15) provides that solicitors must properly account to clients for any financial benefit receives as a result of their instructions.</p>	<p>No.</p> <p>No.</p> <p>No.</p>
CONC 5	<i>Responsible lending</i>			
	<p>This applies in relation to consumer credit lending and deals with assessing customers' creditworthiness prior to their entry into regulated credit agreements.</p>	<p>No, solicitors will not be involved in consumer credit lending as part of their business – see notes to CONC 2.3 above.</p>	<p>N/A</p>	<p>No.</p>
CONC 5A	<i>Cost cap for high-cost short-term credit (comes into force on 2/1/2015)</i>			

	As above.	No, solicitors will not be involved in providing this type of credit.		No.
CONC 6	<i>Post contractual requirements</i>			
	This applies in relation to consumer credit lending and deals with assessing creditworthiness during the lifetime of agreements.	No, solicitors will not be involved in consumer credit lending as part of their business (see notes in relation to CONC 2.3 above).	N/A	No.
CONC 7	<i>Arrears, default and recovery (including repossession)</i>			
	<p>This applies to firms in respect of debt collecting, and includes:</p> <ul style="list-style-type: none"> - Having clear, effective and appropriate arrears policies and procedures. - Treatment of customers in default and arrears; i.e. 'treating customers fairly' and, more specifically, treating customers in arrears difficulties with forbearance and due consideration e.g. allowing a reasonable time for repayment of debts, not refusing to 	<p>This is the section of CONC which is most likely to be relevant to solicitors' firms, many of whom will be involved in debt collecting.</p> <p>This will be a matter for solicitors' financial services clients, rather than solicitors themselves. Solicitors will then have to observe the clients' policies and procedures when acting on their behalf, and clients will be responsible for ensuring they do so.</p> <p>Solicitors will always be acting on clients' instructions in this type of scenario. This will be of some relevance, in terms of the advice solicitors provide to their clients, but solicitors will not have any discretion in terms of e.g. allowing clients' customers</p>	<p>See below.</p> <p>N/A</p> <p>N/A</p>	<p>It is likely some of the provisions of CONC 7 would need to be incorporated, if that approach were taken. Having said that, CONC 7.1.3G reinforces the application of 1.2.2R in this context; i.e. firms must ensure anyone acting on their behalf complies with CONC. Where solicitors are acting on behalf of financial services clients, those clients will have to take steps to ensure their solicitors' compliance. As such, it may not be necessary for the SRA to separately require compliance via the SRA Handbook. As to the specific provisions set out:</p> <p>No, it should not.</p> <p>No, it should not.</p>

	<p>negotiate with customers developing a payment plan, giving consideration to reasonable offers of repayment, not pressurising customers to pay in a single or very few repayments or in an unreasonably short period of time, and not taking disproportionate action against customers in arrears or default.</p> <ul style="list-style-type: none"> - Providing customers with information on the amount of arrears and balance owing. - Pursuing and recovering debts, e.g. not pursuing an individual which the firm knows or believes not to be the lender or hirer, not ignoring a customer's claim that a debt has been settled, referring any reasonable payment offer to the lender and passing on payments to the lender in a timely manner (normally within 5 working days of payment). - Exercise of continuous payment authority. - Application of interest and charges e.g. not claiming the costs of recovering a debt from the customer unless there is a contractual right to do so, not imposing charges unless they are no higher than necessary to cover the reasonable costs of the firm and not causing a customer to believe he is legally responsible for the costs of recovery where no such obligation exists. 	<p>time to pay, or accepting offers of repayment from clients' customers. Again, solicitors will have to observe their clients' policies and clients will be responsible for ensuring they do so.</p> <p>Again of some relevance, although solicitors will be reliant on their financial services clients for provision of the relevant information.</p> <p>Yes, this is relevant to solicitors undertaking debt recovery work.</p> <p>No.</p> <p>Ye, some relevance to solicitors.</p>	<p>No.</p> <p>Indicative behaviours to Chapter 11 of the SRA Code of Conduct include not demanding anything which is not legally recoverable. There are no provisions dealing specifically with referring payment offers to clients and passing on payments promptly, although this would form part of acting in the client's best interests (SRA Principle 4).</p> <p>N/A</p> <p>Yes, the SRA Code of Conduct (IB(11.8)) provides that O(11.1) will not be achieved by solicitors demanding anything for themselves or on behalf of a client which is not legally recoverable.</p>	<p>Possibly, although this responsibility would really fall to financial services providers rather than their solicitors.</p> <p>Yes, if it was felt these provisions should be set out more specifically.</p> <p>No.</p> <p>No, it should not.</p>
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	<ul style="list-style-type: none"> - Jurisdictional requirements e.g. taking account of differences in law and procedure when dealing with a customer in a different jurisdiction, not commencing or threatening to commence proceedings in the wrong jurisdiction. - Contact with customers e.g. explaining who the person contacting the customer works for and the purpose of contact, not making any statement which could induce the customer to contact the firm misunderstanding the reason for making contact (e.g. leaving a calling card suggesting the customer has missed a delivery) and not embarrassing the customer or making it obvious they are being pursued in relation to a debt. - Treatment of customers with mental capacity limitations e.g. suspending pursuit of recovery action. - Disclosures as to authority or status e.g. not suggesting action can be taken when legally it cannot; not suggesting enforcement action will be taken when no judgment has yet been obtained. - Data accuracy and outsourcing activities e.g. maintaining accurate and adequate 	<p>Yes, relevant to solicitors.</p> <p>Yes, relevant to solicitors.</p> <p>Relevant, although again this will be a matter for financial services clients, rather than solicitors themselves.</p> <p>Yes, relevant to solicitors.</p> <p>Yes, relevant to solicitors.</p>	<p>The SRA Code of Conduct (O(11.1)) provides that solicitors must not take unfair advantage of third parties in either a professional or personal capacity, which may include (as per IB(11.7)) taking unfair advantage of an opposing party's lack of legal knowledge.</p> <p>As above.</p> <p>N/A</p> <p>Yes, the SRA Code of Conduct (O(11.1)) provides that solicitors must not take unfair advantage of third parties in either a professional or personal capacity, which may include (as per IB(11.7)) taking unfair advantage of an opposing party's lack of legal knowledge.</p> <p>Yes, solicitors have obligations under the Data Protection Act 1998 in relation to the</p>	<p>Yes, if it was felt this need to be covered more specifically.</p> <p>Yes, if it was felt this need to be covered more specifically.</p> <p>Possibly, although this is really more relevant to financial services providers than their solicitors.</p> <p>No, it should not, given the existing provisions of the SRA Handbook.</p> <p>No, it should not, given the existing provisions of the Data Protection Act 1998 and the SRA Handbook.</p>
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	<p>data, ensuring information passed to agents is adequate and accurate, taking care in instructing third parties and properly investigating complaints about third parties.</p> <ul style="list-style-type: none"> - Suspending action where a debt is disputed, investigating the dispute and providing details to the client; informing the customer as to the outcome of investigations. - Statute barred debts e.g. not misleading customers by suggesting they may be subject to court action for a statute barred debt. - Not passing data to lead generators, debt management firms etc. unless it is appropriate to do so. 	<p>Relevant, although this will be a matter more for financial services clients rather than solicitors themselves.</p> <p>Yes, relevant to solicitors.</p> <p>Yes, relevant to solicitors.</p>	<p>accuracy of data. Indicative behaviours in terms of achieving the outcomes set out in Chapter 9 of the SRA Code of Conduct include only entering into arrangements with reputable third parties and monitoring the outcome of those arrangements to ensure that clients are treated fairly (IB(9.1)); also, having effective systems in place for assessing whether any arrangement complies with statutory and regulatory requirements (IB(9.7)).</p> <p>N/A</p> <p>The SRA Code of Conduct (O(11.1)) provides that solicitors must not take unfair advantage of third parties in either a professional or personal capacity, which may include (as per IB(11.7)) taking unfair advantage of an opposing party's lack of legal knowledge. (IB(11.8) provides that O(11.1) will not be achieved by solicitors demanding anything for themselves or on behalf of a client which is not legally recoverable, which would extend to pursuing a statute-barred debt.</p> <p>Under the SRA Code of Conduct (O(6.1)) solicitors should ensure that any recommendation that a client uses a particular person or business is in the best interests of the client. O(4.1) requires that</p>	<p>Possibly, although this is really more relevant to financial services providers than their solicitors.</p> <p>No, it should not.</p> <p>No, it should not.</p>
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			solicitors should keep a client's affairs confidential unless disclosure is required or permitted by law or the client consents.	
CONC 8	Debt advice			
8.2	<p>Sets out conduct standards in relation to debt advice (debt counselling and debt adjusting). This includes:</p> <ul style="list-style-type: none"> - Ensuring appropriate advice is given to customers residing in different parts of the UK and establishing clear and effective policies to identify particularly vulnerable customers. - Ensuring communications to lenders on behalf of its customers are transparent to ensure the customer's interests are not adversely affected. - Provision of pre-contract information and advice, such as sufficient information about 	<p>Yes, relevant to solicitors.</p> <p>Yes, relevant to solicitors.</p> <p>Yes, relevant to solicitors.</p>	<p>The SRA Code of Conduct (O(2.2) provides that solicitors must provide services to clients in a way that respects diversity. The notes to SRA Principles specify that providing a proper standard of client care and work includes taking into account the individual needs and circumstances of each client (2.9) and making reasonable adjustments to ensure disabled clients are not placed at a substantial disadvantage (2.3).</p> <p>Not specifically, but this would form part of acting in the best interests of each client (SRA Principle 4).</p> <p>Yes, indicative behaviours in respect of the outcomes set out in Chapter 1 of the SRA</p>	<p>No, it should not, given the existing provisions of the SRA Handbook.</p> <p>Yes, if it was felt this need to be covered more specifically.</p> <p>No, it should not.</p>

	<p>the firm's services offered in the contract with the customer (duration of the contract, costs of the firm's services, elements of service the fee covers).</p> <ul style="list-style-type: none"> - Ensuring all advice given and action taken by the firm has regard to the best interests of the customer and is appropriate to the customer's circumstances and carrying out an assessment of the customer's financial position before suggesting a course of action in relation to the customer's debts. - Ensuring financial statements sent to lenders are accurate and realistic, and that any offer is realistic and sustainable. - Ensuring customers are only advised not to make contractual repayments where this is in their best interests, and that they are warned of the consequences. - Charging for debt counselling, debt advice and related services e.g. ensuring the timing and amount of fees does not result in the customer paying those in priority to making payments to lenders in accordance with a debt management plan, or undermine the customer's ability to pay lenders. - Disclosure of commission. 	<p>Yes, relevant to solicitors.</p> <p>Yes, potentially relevant to solicitors.</p> <p>Yes, potentially relevant to solicitors.</p> <p>Yes, potentially relevant.</p> <p>Yes, potentially relevant.</p>	<p>Code of Conduct include agreeing an appropriate level of service with the client (IB(1.1), clearly explaining fees (IB(1.14)) and providing costs information in a clear and accessible form appropriate to the needs and circumstances of the client (IB(1.19)).</p> <p>This would form part of acting in the best interests of each client (SRA Principle 4) and taking into account the individual needs and circumstances of each client (note 2.9 to SRA Principles).</p> <p>Not specifically, but this would form part of acting in the best interests of each client (SRA Principle 4).</p> <p>Not specifically, but this would form part of acting in the best interests of each client (SRA Principle 4).</p> <p>Under the SRA Code of Conduct (O(1.6)), solicitors should only enter into fee arrangements which they consider are suitable for the client's needs and take account of the client's best interests.</p> <p>Yes, the SRA Code of Conduct (O(1.15)) provides solicitors must properly account to</p>	<p>No, it should not, given the existing provisions of the SRA Handbook.</p> <p>Yes, if it was felt this need to be covered more specifically.</p> <p>Yes, if it was felt this need to be covered more specifically.</p> <p>Yes, if it was felt this need to be covered more specifically.</p> <p>No.</p>
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	<ul style="list-style-type: none"> - Distinguishing the firm's fees from court fees or fees for insolvency proceedings. - Not requesting payments from a customer's account without authorisation, accepting fees or charges by credit card or another form of credit or imposing unreasonable or disproportionate cancellation charges. - Conduct of business in relation to provision of credit information services, e.g. not claiming to be able to remove negative but accurate information from a credit file or misleading a customer about the length of time such information is held. 	<p>Yes, potentially relevant.</p> <p>Unlikely to be relevant.</p> <p>Potentially relevant.</p>	<p>clients for any financial benefit received as a result of their instructions.</p> <p>Yes, under the SRA Code of Conduct (O(1.13)) clients should receive the best possible information about the likely cost of their matter, which includes clearly explaining fees (IB(1.14)), providing costs information in a clear and accessible appropriate to the needs and circumstances of the client (IB(1.19)) and ensuring disbursements included in any bill reflect the actual amount spent or to be spent (IB(1.21)).</p> <p>N/A</p> <p>Not specifically, but this would form part of acting in the best interests of each client (SRA Principle 4).</p>	<p>No, it should not, given the existing provisions of the SRA Handbook.</p> <p>No.</p> <p>Yes, if it was felt this need to be covered more specifically.</p>
CONC 9	<i>Credit reference agencies</i>			
	Provisions relevant to firms providing credit references.	No.	N/A	No.
CONC 10	<i>Prudential rules for debt management firms</i>			
	Provisions relevant to debt management firms or not-for-profit debt advice bodies. These do not apply to	No.	N/A	No.

	authorised professional firms whose main business is the practice of their profession and whose regulated activities to their main business.			
<i>CONC 11</i>	<i>Cancellation</i>			
11.1	Deals with customers' right to cancel distance contracts which are credit agreements, or agreements relating to debt counselling, debt adjusting or providing information services within 14 days.	Yes, potentially relevant.	Yes, these are Consumer Rights Directive Requirements implemented by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.	No, given the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 will apply in any event. .
<i>CONC 12</i>	<i>Requirements for firms with interim permission for credit-related regulated activities</i>			
	As above.	Only relevant to firms with interim permission. These firms are FCA authorised and therefore required to comply with CONC in any event.	N/A	No.
<i>CONC 13</i>	<i>Guidance on the duty to give information under sections 77, 78 and 79 of the Consumer Credit Act 1974</i>			
	Provisions relating to firms providing consumer credit lending and consumer hiring.	No.	N/A	No.
<i>CONC 14</i>	<i>Requirements in relation to agents</i>			
	<p>Requirements including:</p> <ul style="list-style-type: none"> - Not appointing an individual as agent of the firm in carrying out regulated activities of the firm unless the individual works only as agent for the firm and not any other principal and the firm accepts responsibility for the agent's conduct, and there is a written contract in place enabling the firm to control the individual's activities when acting in the course of its business and adequate policies to ensure the agent's compliance with the firm's regulatory obligations. 	Yes, potentially relevant.	Yes, indicative behaviours in terms of achieving the outcomes set out in Chapter 9 of the SRA Code of Conduct include only entering into arrangements with reputable third parties and monitoring the outcome of those arrangements to ensure that clients are treated fairly (IB(9.1)); also, having effective systems in place for assessing whether any arrangement complies with statutory and regulatory requirements (IB(9.7)).	No, it should not.

	<ul style="list-style-type: none"> - Having adequate policies to identify conflicts of interest between agents and clients of the firm. 	Yes, potentially relevant.	Yes, the SRA Handbook (O(3.1)) provides solicitors must have effective systems and controls in place for identifying and assessing potential conflicts of interest.	No, it should not.
CONC 15	<i>Second charge lending</i>			
	<p>Provisions relevant to firms with respect to consumer credit lending in relation to regulated credit agreements secured on land, and credit broking in relation to those agreements including:</p> <ul style="list-style-type: none"> - Disclosure requirements before a credit agreement is made and advising customers in relation to particular products, including disclosure of features carrying a particular risk to customers, encouraging customers to read documentation and obtain independent legal advice. - Establishing contact with any prior chargeholders prior to repossessing property under the terms of a second charge and notifying customers of any shortfall following repossession and sale of their property. - Taking care to ensure the suitability of advice when making recommendation and making it clear to the customer if secured borrowing is not in their best interests. 	<p>Unlikely to be relevant. Solicitors' involvement would generally end with referring customers to a financial services provider.</p> <p>This will really be a matter for financial services clients of solicitors, rather than solicitors themselves. Solicitors will not be involved in taking and enforcing charges over their own clients' properties.</p> <p>Yes, possibly relevant.</p>	<p>Under the SRA Code of Conduct (O(6.1)) solicitors should ensure that any recommendation that a client uses a particular person or business is in the best interests of the client. IB(6.1) suggests this may be achieved by ensuring any arrangement entered into in respect of regulated mortgage contracts (as second charge loans will be from March 2016) provides that referrals will only be made where this is in the best interests of the particular client and the contract is suitable for the needs of the client.</p> <p>N/A</p> <p>This would form part of acting in the best interests of each client (SRA Principle 4) and taking into account the individual needs and circumstances of each client (note 2.9</p>	<p>No, it should not, given the existing provisions of the SRA Handbook.</p> <p>No.</p> <p>No, it should not, given the existing provisions of the SRA Handbook.</p>

			to SRA Principles); also, only making recommendations or referrals which are in the client's best interests (see O(6.1) and IB(6.1) above).	
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