

GOOD PRACTICE

AWARENESS GUIDELINES

for helping consumers with
mental health conditions and debt

Money Advice Liaison Group
Third edition, 2015

ENDORSEMENTS



ALASTAIR CAMPBELL

Strategist and communications expert, Alastair Campbell is Mind Champion of the Year and supports these Good Practice Guidelines.

“One in four of us will directly experience mental illness in any one year. For many, those problems are exacerbated by financial problems, sometimes in part caused by these mental health conditions. It cannot be entirely coincidental that the word depression has an economic as well as a health meaning. According to The Money Charity, personal debt in the UK stands at £1,459 trillion. These updated Guidelines will provide a clearer focus for all creditors, advisers and all professionals working with consumers who are experiencing mental health conditions where these conditions affect their ability to manage their money. They will go a considerable way to assisting all the relevant organisations to work together to ensure that both mental health and financial difficulties are identified so appropriate support can be provided.”



STEPHEN FRY

Comedian and writer Stephen Fry applauds the 3rd edition of the MALG Mental Health Good Practices Guidelines.

“My own bipolar condition has caused me to go on many giddy spending sprees so I have first hand experience of the difficulties of debt brought on by poor mental health. I fully support the work being undertaken by the Money Advice Liaison Group in this complex and sensitive area and believe this has the potential to be a very beneficial resource for creditors, debt collection companies and advisers attempting to assist the individual suffering serious mental health problems.”

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A pdf version of these guidelines is available at www.malg.org.uk, www.moneyadvicetrust.org and www.rcpsych.ac.uk/debt

Paper copies are available on request from the Secretary to MALG: info@malg.org.uk

FOREWORD



ANTHONY SHARP

Chair of the Money Advice Liaison Group

The Money Advice Liaison Group is delighted to publish this edition of the Good Practice Awareness Guidelines for Helping Consumers with Mental Health Conditions and Debt. The first edition was published in 2007; the second in 2009.

A Working Party of creditors, advisers and representatives from consumer policy experts and the Royal College of Psychiatrists has created the document. It has received the approval of the Information Commissioner's Office and has been shared with The Financial Conduct Authority (FCA). Although the Guidelines are voluntary, they are acknowledged within the FCA's Consumer Credit Sourcebook (CONC) setting out its rules and guidance for consumer credit.

I wish to acknowledge the enormous support and assistance given by everyone working under the umbrella of the MALG Mental Health Working Party in producing this document. Last, but very much not least, the wholehearted support and advice given by the Royal College of Psychiatrists at every stage has been invaluable.

It is important to realise that this is not a new document but an updated version of an existing document. Its sole purpose is to assist creditors,

local authorities, debt collection companies, enforcement agents, advisers and all people working with individuals who are genuinely and particularly experiencing mental health conditions and debt, where their condition affects their ability to manage money.

I commend these valuable Guidelines to you all and sincerely hope they will continue to improve understanding and communication amongst all parties involved with individuals who are experiencing mental health conditions and debt.

I would like to acknowledge the generosity of debt collection companies dlc and 1st Credit Ltd for contributing towards the production costs of these updated Guidelines. MALG is very grateful to both sponsors.

A handwritten signature in black ink, appearing to read 'A. Sharp', written over a horizontal line.

FOREWORD



JOANNA ELSON

Chief Executive of the Money Advice Trust

Experts indicate that one in four adults will experience a mental health issue in any one year and that over 10 million people in the UK experience some form of mental illness. It is therefore not surprising that a proportion of those in debt come from this group – in fact it would be surprising if they didn't.

I was asked back in 2006 to take over as chair of the MALG Mental Health Working Party to develop guidelines for creditors and the advice sector regarding debt and mental health, and we are now pleased to publish the 3rd edition, which includes updated guidance on the use of the Debt and Mental Health Evidence Form.

It also includes information on the type of training that is available and that should be undertaken by advisers and creditors. Partnership is very much the approach that works here; the Trust has partnered with the Royal College of Psychiatrists, as well as mental health charity Rethink Mental Illness, to develop training as part of our Wiseradviser programme for recovery staff, enabling them to apply the practical steps in the Guidelines.

We are delighted that the Guidelines have been acknowledged in the Financial Conduct Authority's Consumer Credit Sourcebook, as well as in the Lending Codes of the Lending Standards Board and the Finance & Leasing Association, and that they are used in a practical way across industry as part of best practice and training processes.

I am indebted to the Working Party, drawn from creditors, the advice world and the mental health profession for their continued sterling work.

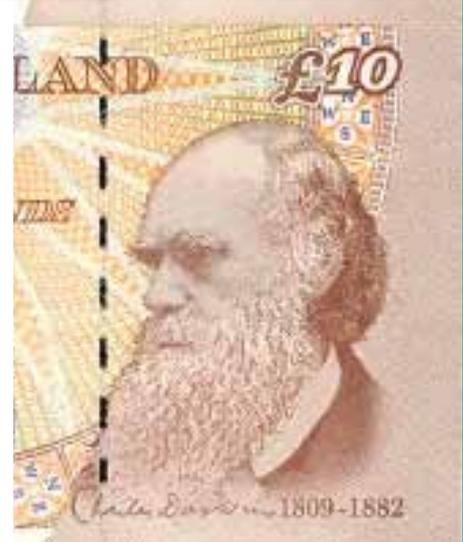
Joanna Elson

INTRODUCTION

Florence Nightingale (1820-1910) **heard voices and experienced a number of severe depressive episodes in her teens and early 20s – symptoms consistent with the onset of bipolar disorder**



Charles Darwin (1809-1882) **experienced anxiety, panic attacks and mental torment that often left him in floods of tears**



Adam Smith (1723-1790) **began to suffer shaking fits while studying at Oxford, now thought to be symptoms of a nervous breakdown.**

INTRODUCTION

Purpose

MALG is a non-policy making body and, as such, these Guidelines are voluntary. However they are referred to in the Financial Conduct Authority (FCA)'s Consumer Credit Sourcebook¹ and in industry codes, reflecting their importance. We believe that the Guidelines indicate good practice in the treatment of consumers with mental health conditions, particularly where that mental health condition affects the consumer's ability to manage money. We hope that they will result in a greater awareness of the difficulties such people face.

The Guidelines demonstrate good practice in the management of debt when a consumer with a mental health condition is in financial difficulty. They cover: business procedures; staff training; collaboration between creditors, advice agencies and health and social care professionals; outsourcing of debt collection; court action; writing off debts; taking account of disability benefits in repayment plans; and the use of health evidence and a common financial tool to show income and expenditure.

This third edition of the Guidelines is a general updating of the document which includes:

- Changing the order of some Guidelines;
- Incorporating benefit and debt enforcement changes
- Applying the context of the new FCA regime
- Giving a clearer focus for creditors, advisers and all professionals working with consumers with mental health conditions where those conditions affect their ability to manage money.

Mental health, financial difficulties and debt

The extent and impact of mental health conditions

Based on research conducted in 2007, one in four adults in England experiences at least one diagnosable mental health condition in any one year².

The most common conditions are anxiety and depression, which affect almost one in ten adults. Rarer mental health conditions such as schizophrenia and bipolar condition occur in around one in every 100 people. Some conditions tend to affect particular social groups disproportionately – dementia, for example, affects 6% of people over 65, and 20% of those over 80. We should also note that consumers may have more than one mental health condition.

Financial difficulty, debt, and mental health.

In these Guidelines, unless otherwise specified, the term 'consumer' is used to refer to a consumer who is in debt. The financial difficulties³ experienced by consumers with mental health conditions can be caused by a range of factors, including:

- Lack of money management skills
- Reliance on benefit income
- Fluctuations in income or an inability to work
- Unmet housing, care or treatment needs
- Difficulties with communication
- Relationship breakdown
- Health problems affecting themselves or their family, including terminal illness.

¹ FCA CONC 7.2.3

² NHS Information Centre for health and social care, 2009 (*Adult Psychiatric Morbidity in England - 2007, Results of a household survey*). www.hscic.gov.uk/pubs/psychiatricmorbidity07

³ See *Life on the Edge*, StepChange 2014, www.stepchange.org/Portals/0/StepChangeLifeontheEdgereport.pdf

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There is no one definition of financial difficulty. However, in this context, it could be assessed according to both objective and subjective measures.

Objective measures might include:

- A high proportion of income spent on servicing debt
- Arrears on credit commitments and domestic bills
- Variable and/or low income.

Subjective measures – as seen from the consumer’s perspective – might include:

- Regarding their financial situation as unmanageable or out of control
- Being unable to fully assess their financial situation
- Feeling that their financial situation has become oppressive.

Without monitoring or intervention, people with mental health conditions who experience debt are at risk of falling into a problem debt spiral. Furthermore, of significance for its impact on consumer health, research indicates that debt is associated with anxiety and stress, depression, self-harm or suicidal thoughts, and relationship strain and social isolation.

There are numerous reasons why consumers with mental health conditions experience above average levels of debt and arrears. These include:

- The fact that consumers with mental health conditions often live on low incomes and experience high levels of unemployment. Debt disproportionately affects those on low incomes.
- The impact of certain mental health conditions on a consumer’s condition, perhaps exacerbating spending (eg mania and spending sprees) or communication difficulties/withdrawal, can all contribute to personal debt.
- Relatively low levels of awareness and intervention. There are a small number of specialist training programmes and other resources for creditor⁴ sector staff that cover how to work effectively with consumers with debt and mental health conditions, or with the health and social care professionals who support them.

The Debt and Mental Health Evidence Form⁵

A significant number of the recommendations in these Guidelines deal with collecting evidence to help demonstrate the impact of a consumer’s mental health condition on his or her ability to deal with debt issues.

It was agreed by all MALG stakeholders that advisers and creditors needed a tool enabling them to request clear, relevant and comprehensive information in a standard format from health and social care professionals, as appropriate to each given situation.

⁴ See definition of ‘creditor’ below under ‘Who should follow the Guidelines’

⁵ www.malg.org.uk/dmhcf3creditors.html

Debt and Mental Health Evidence Form (Version 3)
Only a health or social-care professional should fill in this form

This form has been given to you because the person named opposite:

- is in debt to one or more creditors; and
- has said they have a mental health problem that affects their ability to repay.

You have been identified by this person as:

- a health or social-care professional who knows them; and
- a professional who could provide medical evidence about their mental health situation.

They have given their written permission for you to fill in this form (this is enclosed).

Your evidence could really help the person's health and well-being

- It will help creditors to take relevant mental health problems into account.
- This could improve the person's financial situation and mental health.

Person's full name: _____

Date of birth: _____

Address: _____

Advice/creditor organisation
 Organisation: _____
 Reference number: _____

Can you help this person? It will take just three steps.

First step: Please fill in this form. The information you give will be shared with the person named above.	Second step: Please sign and stamp the form.	Third step: Please return this form in the envelope provided. Please also enclose the patient Consent Form (you may want to photocopy this for your files).
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About the person:

Q1: What is your relationship with the person named above? I am working with them as a:

general practitioner mental health nurse social worker psychiatrist clinical psychologist

occupational therapist other (please give details) _____

I do not know the person (if so, please return this form in the envelope provided.)

Q2: Does the person have a mental health problem? Yes No

No If you answer 'No', please sign, stamp and return the form.

Q3: What is this mental health problem? If it has a name or diagnosis, what is it?

The DMHEF was developed by the Royal College of Psychiatrists and the Money Advice Liaison Group. It has been approved by The Information Commissioner's Office as keeping to the Data Protection Act 1998. For more information, please visit www.rpsych.ac.uk/debt or www.malg.org.uk

- 4 Does the person have a mental health problem that affects their ability to manage their money?
- 5 Is the person receiving treatment or support for this mental health problem and does the treatment or support affect their ability to manage their money?
- 6 When communicating with the person, are there any special circumstances that a creditor needs to take into account?
- 7 What was the approximate date when (a) this mental health problem first started, (b) the first treatment was given, (c) the most recent episode took place, and (d) is the episode on-going?
- 8 Is there anything else we should know about the person?

Who should follow the Guidelines

The audiences for these Guidelines are:

- Creditors – that is any organisation to whom a consumer owes money. Unless otherwise specified in these Guidelines, 'creditor' therefore includes original lenders, secured and unsecured, and third parties such as debt collection agencies/companies, enforcement agents and any organisation (such as a government department or agency, local authority, housing provider, or utility company) to which a consumer owes money.
- Debt advisers (free and fee-charging).
- Other organisations dealing with debt irrespective of whether they are regulated by the FCA.
- Health and social care professionals.

As a result, MALG and the Royal College of Psychiatrists, with financial support from the Money Advice Trust (MAT), developed a standard Debt and Mental Health Evidence Form (DMHEF).

The DMHEF covers the following key areas by asking eight questions of the relevant health and/or social care professional:

- 1 What is your relationship with the person reporting the mental health problem?
- 2 Does the person have a mental health problem?
- 3 What is this mental health problem? If it has a name or diagnosis, what is it?

INTRODUCTION

Relationship with regulation, codes and training

Creditors and debt advice agencies operate within a highly regulated environment and compliance with statute, case law, regulatory requirements and principles takes precedence over these Guidelines. Nevertheless, these Guidelines should help firms meet obligations under statute, regulations and their own trade association codes of practice. These include the FCA's Consumer Credit Sourcebook (CONC)⁶ and other publications⁷, the Equality Act 2010, Insolvency Guidance, and the Tribunal Courts and Enforcement Act 2007.

In addition there are other useful sources of detailed help, good practice and guidance that can support these Guidelines including the British Standard 18477:2010 Inclusive Service Provision; Lending, debt collection and mental health – 12 Steps for Treating Potentially Vulnerable Customers Fairly 2nd edition Royal College of Psychiatrists November 2014; and MALG Briefing Notes 3 and 4.

Which mental health conditions are covered by these Guidelines?

The term 'mental health condition' is used to refer to the range of mental health experiences that can limit a consumer's ability to cope with day-to-day living. Being mentally healthy means having the ability to adapt and cope with change and to make the best of any situation you may find yourself in.

Mental health conditions can be caused by, or result from, a range of factors. There can be direct or underlying biological or organic, psychological and social causes.

These Guidelines do not distinguish between mental health conditions resulting from different factors. In other words all mental health conditions are regarded as being within the scope of these Guidelines, to the extent that their impact affects the consumer's financial/debt management skills.

In particular, it is worth noting that biological or organic mental illnesses are covered by the Guidelines. These are conditions either caused by, or resulting from, disease of the central nervous system. For example, dementia⁸ and Parkinson's disease are both organic mental illnesses.

⁶ <http://fshandbook.info/FS/html/handbook/CONC>

⁷ For example the FCA's April 2014 publication 'Consumer Credit and consumers in vulnerable circumstances' and 'FCA Occasional Paper No 8 Consumer Vulnerability, February 2015'

⁸ Note that this term includes Alzheimer's and amnesiac disorders

Furthermore, there are situations where physical health conditions can cause or result in the development of mental disorders. For example, brain tumours or head injuries are neurological conditions that can cause psychosis, depression, mania and anxiety. Similarly, depression can be ‘caused’ by HIV or cancer (for example, following initial diagnosis, or the trials of living with the condition).

Problems arising from the use of harmful or addictive substances are also relevant for these Guidelines, and include the use of alcohol, illegal or street drugs, prescription and over-the-counter medicines, and volatile chemicals. People can also develop behavioural addictions, such as gambling, to which these guidelines equally apply. Addictions can result in mental and physical illnesses, as well as wider social problems. The treatment of such addictions is undertaken by a range of health and social care professionals, including GPs, specialist substance misuse services, psychiatrists, and social care workers.

Psychiatrists and other health or social care professionals provide care and treatment for mental health conditions. In doing so, they consider the biological, psychological and social factors underpinning the condition, and devise an appropriate programme of care. Where there is doubt about a consumer’s mental health condition, appropriate evidence and guidance can be sought from these professionals⁹.

These Guidelines do not deal with mental capacity issues unless they arise as a result of or in connection with mental health problems¹⁰.

Scottish law

Please note that references to Scottish law, where relevant, are within the body of the text.

There is more information on mental health terminology and the different types of professionals working with mental health conditions in the appendices.



“We often get to meet and talk to people in very difficult financial situations living with mental health problems. We know this leads to challenges for everyone involved and sometimes things can go wrong. We welcome MALG’s continuing commitment to good practice through the publication of these updated guidelines.”

⁹ See the guidance to the DMHEF, MALG Briefing Note 3 “The Debt and Mental Health Evidence Form (Version 3)” available at www.malg.org.uk

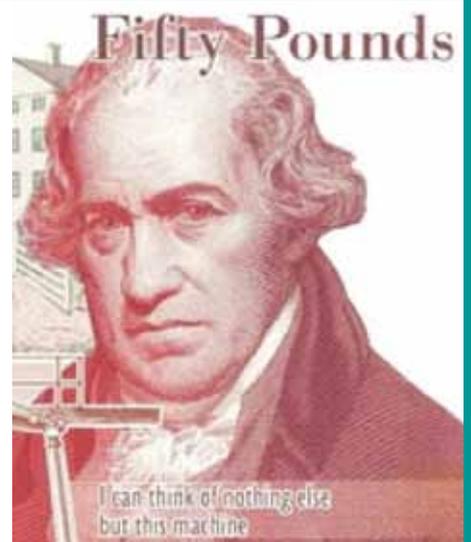
¹⁰ See FCA CONC 2.10 (Mental Capacity Guidance). CONC 2.10.6 lists a mental health condition as one of the most common potential causes of mental capacity limitations.

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Sir Edward Elgar (1857-1934) **at the age of 22, became employed at the Worcester City and County Lunatic Asylum**



James Watt (1736-1819): **"I am plagued with the blues... my head is too much confused to do any brain work"**



Elizabeth Fry (1780-1845) **is the odd one out – she campaigned on many issues, including the reform of the asylum system**



1

Treating consumers with mental health conditions fairly

Creditors, other organisations dealing with debt, and debt advisers (as defined in Who should follow the Guidelines above), should have procedures in place to ensure that people in debt with mental health conditions are treated fairly and appropriately.

- 1.1 Firms¹¹ should consider their processes and systems to ensure that, from the point at which they understand or reasonably suspect the existence of a mental health condition, they can be responsive to a consumer¹² in financial difficulties¹³.
- 1.2 The firm needs to take steps to establish whether the mental health condition affects a consumer's ability to manage money and debt, based on relevant testimony to be provided by the consumer and/or their representative, carer or social and health caseworker. Guidelines 7 and 8 provide further guidance on the collection of relevant evidence.
- 1.3 The firm also needs to establish whether the mental health condition affects a consumer's ability to deal with telephone, letter, electronic communication or face-to-face communication, based on relevant testimony to be provided by the consumer and/or their representative, carer or social and health caseworker.
- 1.4 It is important to be aware that where a consumer has a given mental health condition, whether formally diagnosed or otherwise, that is not of itself an indicator of their relative inability to manage money and debt. What matters is the effects the consumer's condition (and/or associated medication) have on their ability to manage money. These effects will differ from one consumer to another, and may vary over time.
- 1.5 The appropriate response from firms will differ in each case and could involve a range of approaches, including:
- Working positively with an advice agency;
 - Promptly carrying out agreed actions;
 - Being flexible in responding to offers or schedules of repayment;
 - Sensitively managing communications with the consumer (for example, preventing unnecessary and unwelcome mailings).
- 1.6 The Debt & Mental Health Evidence Form (DMHEF) helps demonstrate the impact of a consumer's mental health condition(s) on their ability to deal with debt issues. The third version was launched on 28th November 2012 and can be downloaded from the Money Advice Liaison Group (MALG) website www.malg.org.uk, or the Royal College of Psychiatrists' website at www.rcpsych.ac.uk/debt.

¹¹ A firm in these Guidelines means a body that in the course of business, whether principal or subsidiary, liaises with individuals or third parties acting on behalf of individuals in connection with credit and/or debt. This includes, but is not limited to, creditors, debt counsellors, debt advisers, debt collection agencies, enforcement agents and government organisations.

¹² Unless otherwise specified, the term "consumer" is used to refer to a consumer who is in debt.

¹³ Note also that Principle 6 of the FCA's Principles for Businesses (PRIN) requires authorised firms to pay due regard to the interests of their customers and treat them fairly. In addition, CONC 7.2.1 requires firms to establish and implement clear, effective and appropriate policies and procedures for the fair and appropriate treatment of customers who the firm understands or reasonably expects to be particularly vulnerable, for example because of mental health difficulties or mental capacity limitations.

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Firms wanting to receive evidence by means of the DMHEF should ask the consumer to complete a DMHEF Consent Form and pass it and the blank DMHEF to their own chosen health or social care professional. See the above websites and Guidelines 7, 8, 9 and 10 for further detail on how to use the DMHEF. In the case of advisers offering a casework service, they can send the 'casework' form and blank DMHEF to the consumer's health professional.

- 1.7 Of key importance for firms is the need to be mindful of mental health conditions and ensure that they have systems in place to be able to respond appropriately. Such a high-level commitment should be enshrined in relevant codes of practice.
- 1.8 Firms should also give due attention to guidance within the Equality Act (including any changes made in relation to this Act¹⁴) – such as the need to make reasonable adjustments where the condition is long-term.
- 1.9 It is also recommended that firms publicise and share examples of good practice from within their own organisations, within their Trade Associations and Institutes, and with colleagues across the industry¹⁵.

2 Staff training

Relevant staff should be trained on the reciprocal impact of mental health conditions and people's ability to manage money and debt.

Creditor and collection agency staff

- 2.1 Once procedures have been developed, it is important to ensure that staff have the ability to implement them where necessary. For example, if collections staff are more sensitive to the issues, it is likely to improve their communication with those consumers who are experiencing mental health conditions, and assist the overall management of those consumers' accounts.
- 2.2 It is important that volumes, types and levels of training should be proportionate both to the structure and staffing arrangements of collections agencies/ departments, and to the role profiles and daily activities of individual workers.
- 2.3 Creditor agencies that use specialist teams to work with consumers with mental health conditions should also consider how the expertise of these teams can be shared with other colleagues via informal/ semi-formal cascading, in-house training courses and so on.

¹⁴ <https://www.gov.uk/government/publications/equality-act-guidance>

¹⁵ A good example of this was achieved in *Lending, debt collection and mental health 12 steps for treating potentially vulnerable customers fairly* 2nd edition Royal College of Psychiatrists November 2014.

3

Joined-up working

Creditors, advice agencies and health and social care professionals should work in a joined-up way.

Advisers, health and social care professionals

- 2.4 Adequate skills and knowledge are not only of concern for the creditor sector. Advisers may well need to be trained on the relationship between mental health conditions and debt. Conversely, practitioners in the health and social care fields may benefit from training on debt advice issues, whether to act as initial problem spotters or more¹⁶.
- 2.5 Across all sectors, training should ensure clarity about the need for workers to recognise the limits of their competence and refer on to specialist colleagues or other agencies as appropriate.

High quality training

- 2.6 It is important that training is carried out in sufficient depth and at the level or equivalent of WiseraDviser as already provided by the Money Advice Trust (MAT)¹⁷. This portfolio of training includes day courses and e-learning for creditors, collection staff and advisers. Training providers should have a quality award, which ensures trainers are expert in their field and also attend courses to share best practice and enhance skills.
- 2.7 MAT offers a one-day course in England, Wales, Scotland and Northern Ireland at no charge to advisers. Training is also provided on a commercial basis to the creditor/collection agency/commercial debt advice/enforcement and local authority sectors. MAT training will be amended to incorporate this latest edition of the Guidelines.

- 3.1 It is important that members of each agency helping to resolve a consumer's debt problems work together, exchange information (with the consumer's consent) and explain what might be unfamiliar working practices to each other. Better dialogue overall may lead to potential financial difficulties being addressed at an earlier stage.
- 3.2 Developing relationships at local and regional level via mechanisms such as the MALG Regional Fora and Community Mental Health Team contacts will help join up the 'three points of the triangle'. In particular, advisers need to work closely with health and social care professionals in relation to consumers whose mental health conditions have a significant impact on their ability to manage money. In turn, health and social care professionals should seek to engage with both advisers and creditors.

¹⁶ For more information see <https://www.rcpsych.ac.uk/pdf/FinalDemandcf.pdf>

¹⁷ www.moneyadvice.org.uk/howwework/partnership/creditor/Pages/Mental-health-training-for-recovery-staff.aspx

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- 3.3** High-level links at a national level between and among creditors, advice sector bodies, and health and social care agencies also need to be developed and maintained to ensure ongoing commitment to and promotion of the principles enshrined in these Guidelines.
- 3.4** While the diagnosis, care or treatment of someone with a mental health condition is not the responsibility of creditors or advisers, they should nonetheless ensure they have procedures in place to take account of the consumer's experiences and needs, and respond sensitively and positively. Improvements can also be achieved in the approach taken by health and social care professionals to support consumers.

4

Data Protection procedures¹⁸

Creditors and advisers should have procedures in place to accurately record relevant information on consumer files and manage accounts appropriately.

- 4.1** Information relating to a consumer's physical or mental health or condition is termed 'sensitive personal data' under the Data Protection Act 1998 (DPA), and can usually only be processed if the consumer concerned has given his or her explicit consent to that processing taking place¹⁹. In addition, any organisation that intends to process sensitive personal data must first ensure it is included on the register of data controllers maintained by the Information Commissioner's Office (ie. is the organisation properly registered under the Data Protection Act 1998?).
- 4.2** 'Explicit consent' is not defined in the Data Protection Act, but the Act distinguishes between the nature of the consent required for processing non-sensitive personal data and that required for processing sensitive personal data. The latter must be 'explicit'. For processing sensitive personal data, the consumer's consent should be absolutely clear. The consumer (or third party acting with permission on his or her behalf) should be given an absolutely clear explanation of the type of information to be processed, the purposes of the processing, and any special aspects that might affect the consumer, such as any disclosures to third parties that might be made.

¹⁸ The data protection legislation in force at the time of writing these Guidelines is the Data Protection Act 1998. If the legislation changes, the Guidelines will be reviewed accordingly.

¹⁹ For further advice, please refer to MALG Briefing Note 4 entitled *Appropriately processing data from individuals with mental health problems under the Data Protection Act (1998)* www.malg.org.uk/documents/Briefing%20Note%204.%20Designed%20version-.pdf

- 4.3 While explicit consent does not necessarily have to be provided in writing, there should be clear evidence that the steps required to ensure the fair and lawful obtaining of such sensitive data have been taken. It may be enough to ask for consent over the phone, but it is suggested that such calls should be recorded wherever possible.
- 4.4 Creditors and advisers should follow the Act's requirement that information must be accurate, kept securely and, where necessary, kept up to date. The MALG Briefing Note 4 provides further information on the exercise of obtaining explicit consent under the Act²⁰.
- 4.5 It is very important, that once relevant information about the effects of a consumer's mental health condition has been notified with appropriate explicit consent granted, an accurate note is kept on the consumer's file, which is shared across relevant parts of the firm.
- 4.6 For both creditors and advisers, in terms of general good case management and consumer liaison, we recommend that:
- Procedures are put in place to record sensitive personal data.
 - Sufficient and appropriate training is provided to staff (please refer to Guideline 2).
 - Maximum possible flexibility is applied at first points of contact in relation to referring consumers on for specialist assistance.
 - Appropriate levels of discretion/authority are conferred on frontline staff wherever possible, to enable them to make account management decisions.
- Supporting/covering letters from third parties such as advisers or carers, which may provide detailed explanatory information about a consumer's circumstances, should not be separated from budget forms, repayment proposals, or other correspondence.
 - Creditors and advisers should seek to avoid over-reliance on scripted responses or, more generally, use of rigid account management and communication procedures.
- 4.7 Where necessary, procedures covering the key areas of consumer services, account management, and collections should be reviewed to ensure that notified information is recorded, stored with other account information and correspondence, and is readily available to consumer-facing members of staff, who in turn should be trained to examine consumer records adequately.
- 4.8 We make the following further case management recommendations:
- The requirement to keep account records up to date is particularly relevant in the case of consumers who have accrued debt as the result of the onset of a mental health condition (which may have been temporary), or where the mental health condition fluctuates over time.
 - Instances of original correspondence being destroyed and replaced by a generic note to the effect of 'letter received' with no further detail must be avoided. In particular, evidence supplied by health and social care professionals must be kept on file as long as it is relevant, accurate and up-to-date, not least because such information can be costly and difficult to obtain.

²⁰ See footnote 19

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- Creditors and advisers may wish to consider whether to ‘flag’²¹ the files of consumers who have notified relevant mental health information as an ‘early notifier’ device for staff, and may also wish to diarise dates to review these files as standard practice.
- 4.9 Advisers should assist consumers in ensuring that only necessary and relevant information is supplied to creditors, ie. information that explains the effects of a given mental health condition on the ability of the consumer to manage money and debt issues and/or cases where there is a potential or real threat to life or serious injury.
- Voluntary notification of relevant mental health conditions**
- 4.10 Consumers may decide to voluntarily add information about their mental health condition to the credit files held by credit reference agencies (CRAs) in a ‘Notice of Correction’. In doing so, a consumer indicates that they want this information to be known to creditors, although it will only be accessed when a credit search is made.
- 4.11 It needs to be clearly understood that it is the responsibility of the consumer (or that of their representative appointed under a Power of Attorney) to update such a Notice. Information on how to file a Notice of Correction can be found on the websites and in the consumer literature of CRAs. No unauthorised person can view a person’s file or put on a Notice of Correction unless they hold a Power of Attorney.
- 4.12 The three major CRAs, Experian, Equifax and CallCredit, have agreed a standard form of words that consumers (or those holding a Power of Attorney on their behalf)²² might choose to add to their credit record to flag up relevant mental health conditions – please refer to paragraph 4.16 below.
- 4.13 Please note that no CRA can prescribe what a consumer writes in these circumstances. Also, the consumer would need to contact each of the three CRAs separately and request that a Notice be added.
- 4.14 A Notice can be up to 200 words in length, and must not be “frivolous, defamatory, factually incorrect or scandalous”. If the CRA concludes that a suggested Notice from a consumer should not be added to a report, the consumer can ask the Information Commissioner’s Office, as the administrators of the Data Protection Act 1998, to arbitrate.
- 4.15 A Notice can be added or removed as required by the consumer or a person who holds a Power of Attorney on their behalf, and will leave no ‘footprint’ of any kind once it has been removed.
- 4.16 The agreed form of words is as follows:
 “I, John Smith, wish anyone checking my credit report to be aware that I currently have mental health problems that might affect my ability to manage my credit commitments.”
 or

²¹ Please refer to “Best practice in the use of ‘Flags’ to be placed on the accounts/case files of vulnerable individuals who are unable to manage money”. Supplement to MALG Briefing Note 4 available Spring 2015.

²² As a general point, there should be no direct or indirect discrimination in any dealings relating to consumers who appoint third parties to represent them via power of attorney.

“As the person who holds a legal power of attorney for John Smith, I, Mary Jones, wish anyone checking this credit report to be aware that John Smith has mental health problems that might affect his ability to manage credit commitments.”

- 4.17 It is important to ensure both that any information on creditors’ own files regarding such Notices is current and that future lending decisions should always be made with fresh reference to the consumer’s credit record, in order to establish the current existence or otherwise of a Notice.



Information Commissioner’s Office

The ICO welcomes MALG’s guidance, which will help organisations support people with mental health conditions to access and manage their financial and personal information. Under the Data Protection Act, companies are obliged to keep people’s data safe, handle information with proper care, and keep individuals informed about how their data is being used. In this way the DPA plays an important role in protecting those with mental health conditions, particularly in respect of their sensitive personal data. The DPA enables proportionate data processing by organisations when it is necessary, in the interests of an individual, and when proper safeguards are in place – as the guidance explains.

5 Referral mechanisms

Creditors and their agencies should establish referral mechanisms to ensure targeted help is offered to consumers with mental health conditions or those acting on their behalf.

Creditors

- 5.1 Creditors should ensure they have procedures in place to refer consumers, where necessary, to more targeted forms of support. The Money Advice Service website can help source free debt advice²³. If it becomes clear because of a mental health condition, that a creditor’s standard processes are not appropriate, the consumer (or someone acting on their behalf) should be referred to a specialist team trained to help consumers with more complex issues.
- 5.2 It would be good practice for larger companies to have specialists in place as a matter of course. The cost-v-benefit of specialist teams may well work in a creditor’s favour, as such teams would have the skills and experience to process cases more efficiently and effectively.
- 5.3 Any specialist team should have the ability and discretion to manage an account on its own terms, and to coordinate (or prevent) activity from other departments. This is particularly important in larger companies where automated processing may lead to inappropriate referrals to debt collection agencies, standard mailings and so on.

²³ <https://www.moneyadviceservice.org.uk/en/tools/debt-advice-locator>

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- 5.4 Companies that lack the resources to support a specialist team should ensure that members of staff who have relevant experience and the necessary level of authority are able to assist consumers with a notified mental health condition and debt problems.
- 5.5 All creditor companies would enhance communication and contribute to continuity of consumer care if they each nominated a dedicated first point of contact for third parties working with consumers with relevant mental health conditions.

Advisers

- 5.6 Advice agencies should also consider the benefits of a dedicated point of contact for third parties working with consumers with relevant mental health conditions. Advisers' communication with such contacts should be monitored by their managers to avoid these channels being used as an all-purpose route to discuss all/ any cases.

6 Procedures when creditors outsource or sell debts

Creditors that outsource or sell debts, debt collections companies that buy or accept placement of outsourced debts, and enforcement agencies acting on behalf of creditors should ensure they are satisfied that such action is consistent with the intentions of these Guidelines, relevant regulation and codes of practice²⁴.

- 6.1 In some circumstances, it may be helpful to pass, place or sell debt on to third parties for collection, depending on the track record and reputation of particular third parties. For example, some companies may specialise in dealing with cases of hardship and/or vulnerability or have developed relationships with the health sector.
- 6.2 Equally, there may be circumstances where it would create more confusion to a consumer if a creditor were to recall a debt from a third party with whom the consumer was engaged in a reliable and appropriate repayment arrangement.

²⁴ For example, the FCA's rules in CONC 7 dealing with debt collection and debt purchase. Please also note subscribers to the Lending Code are not permitted to sell debt where there is a known mental health condition. For non-subscribers please see Guideline 14 Taking Court Action as a Last Resort.

- 6.3 It can be distressing for consumers with mental health conditions to receive correspondence from new debt collection companies, irrespective of how such correspondence is worded. In these circumstances the creditor needs to make a positive decision about where best such accounts should be managed. If it is within a specialist team in their own firm, they may wish to call the account back once they are notified of the consumer's mental health conditions(s).
- 6.4 Alternatively, the creditor might choose to leave the debt with a debt collection company that specialises in working with particularly vulnerable consumers or to recall the account in order to forward it on to a further debt collection company to administer with optimal expertise. The expectation is that the account will quickly move to the appropriate agency so that any changes do not destabilise the consumer's mental health further.
- 6.5 The creditor should also give due regard to advisers' recommendations in this area. For instance, if the adviser notifies the creditor or debt collection company that no further correspondence should go directly to the consumer (because of the distress this might cause), then systems need to be updated across all collection agencies working on the account in default to make sure this happens. The creditor should also give due regard to guidance contained within the Equality Act, and any additional recommendations made by advisers in this area²⁵.
- 6.6 Problems often arise when, as part of restructuring or for some other reason, a debt is sold on or transferred to another business. A common frustration for consumers or their advisers in this situation stems from the need to provide information more than once. Often information about a consumer or their circumstances is lost, which can cause distress to the consumer and difficulties for the person acting on their behalf.
- 6.7 The original creditors (assignors) should exercise responsibility for the continued application of these Guidelines and carefully monitor companies that purchase their debts (assignees) to ensure compliance. Where legal ownership of the debt is transferred the purchaser is considered to be the 'creditor' and should also exercise responsibility for the continued application of these Guidelines.

²⁵ <https://www.gov.uk/government/publications/equality-act-guidance>

7

How much evidence is needed

Advisers will provide creditors with evidence to confirm a client's debt and mental health status that is proportionate to the type of action requested from the creditor.

- 7.1 Mental health evidence is information about a consumer's mental health provided by a nominated mental health or social care professional who knows the consumer. Such relevant and clear evidence can directly improve a creditor's decision making about what action to take on a consumer's account. However, the decision to obtain medical evidence of a mental health condition should depend on the consumer's situation – it is a case-by-case decision – and not be taken automatically.
- 7.2 The decision to collect medical evidence should take place after conversations have been held with a consumer about their mental health situation, and where (a) unanswered questions, concerns or doubts still remain or (b) the individual's situation is complex and needs further exploration/ additional information.
- 7.3 Effective evidence should be:
 - Sought as early in the debt identification and management process as possible;
 - In writing and, where possible, compliant with the MALG Debt and Mental Health Evidence Form (DMHEF) format;
- 7.4 It should be acknowledged that staff in creditor agencies do not necessarily have the expertise to interpret medical evidence presented and/or representations made by third parties acting on behalf of consumers. Third parties should therefore be aware of the need for patience and clarity when attempting to progress a consumer's case²⁶.
- 7.5 It should also be noted that medical evidence constitutes 'sensitive personal data' and should be handled accordingly. Please refer to Guideline 4 on the data protection requirements relating to the handling of sensitive personal data. Also please refer to the guidance to the DMHEF, MALG Briefing Note 3 'The Debt and Mental Health Evidence Form (Version 3)' available at www.malg.org.uk

²⁶ Version 3 of the DMHEF is designed to help clarity

8

Time to collect evidence of mental health

Where a mental health condition has been notified, creditors should allow a reasonable period for advisers to collect relevant evidence and present it to the creditor.

Advisers

- 8.1 The evidence collection period for advisers could be extended by negotiation with creditors if necessary, in order to accommodate delays in gathering particular items of evidence.
- 8.2 Advisers should do everything reasonable within their power to collect relevant evidence as promptly as possible and present it to the creditor. It is suggested that a minimum of 28 days/one month would be a reasonable point at which to review the situation if necessary, and for advisers to produce a progress report for creditors in the event that not all relevant evidence has been collected.
- 8.3 When a relevant mental health condition is identified, an adviser will typically try to establish the nature of the condition and how it affects their client. This can involve:
- Gathering and reviewing relevant correspondence and documentation;
 - Liaising with health and social care professionals currently working with the consumer and obtaining evidence of how the consumer's mental health condition and/or associated medication impacts on their ability to manage money and resolve/avoid further debt;
 - Assessing the consumer's overall financial, housing and care situation;
 - Agreeing a course of action with the consumer.
- 8.4 It can sometimes take considerable time to obtain evidence on the effects of a consumer's mental health condition, particularly where a consumer has been admitted for care under the Mental Health Act or a longer-term prognosis is awaited. In such situations advisers would need to request a moratorium on the consumer's account.
- 8.5 When requesting that a creditor manages an account in a particular way, it is good practice for the adviser to utilise the evidence in the DMHEF or some other form of reliable evidence and to specify the following:
- The action that is requested from the creditor and how it will benefit the consumer;
 - The specific reason for the request;
 - Any relevant information the adviser has obtained to date and their assessment of it.
- 8.6 Creditors may not be aware that a consumer has a mental health condition and may not receive notification of this until a late stage, for example after the account has entered into the collections phase.

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Creditors

- 8.7 When creditors are notified, they should be responsive to third parties working with the consumer, and actively work with the adviser, consumer and/or carer to agree appropriate courses of action (assuming, of course, that the consumer has given consent for the third party to act on their behalf).
- 8.8 Appropriate courses of action might include agreeing to impose a stay of action – not charging default interest and/or charges for unauthorised borrowing – while information is being gathered by an adviser.
- 8.9 It is recommended that creditors adopt a sympathetic attitude to the application of interest or other charges to the accounts of consumers in prison or hospital, and particularly in cases where the consumer has no third party support to manage their correspondence/affairs.
- 8.10 It would be sensible for creditors to conduct a review of a consumer's account and circumstances at the end of any agreed moratorium period, and to discuss with the adviser any progress in collecting evidence, if this has not already been supplied.

9

Who should provide evidence

Creditors will accept evidence provided from an agreed list of practitioners. Advisers and health and social care professionals should work together to provide this for them.

Creditors

- 9.1 Creditors should be prepared to accept debt and mental health evidence from a range of health and social care professionals who may be able to help a consumer to prove they have a particular mental health condition that may prevent them from being able to manage their financial affairs or pay their debts. Creditors also need to be aware of the variety of organisations and consumers who may be involved in the care of someone with a mental health problem.
- 9.2 Relevant practitioners who may be working with consumers with mental health problems include:
- Care coordinators;
 - Clinical psychologists;
 - General Practitioners (GPs);
 - Mental health nurses/psychiatric nurses;
 - Occupational therapists;
 - Psychiatrists;
 - Social workers;
 - Other mental health professionals;
 - Workers providing support to health and social care professionals.

An explanation of these practitioners' respective roles is in Appendix 2 of this document.

- 9.3 The crucial issue is the nature of a particular practitioner's professional relationship with the consumer, and the degree to which that relationship might inform the practitioner's ability to make judgements about a consumer's money and debt management behaviour.
- 9.4 It is important that creditors give appropriate weight to the perspectives of the particular health or social care practitioner(s) best equipped to comment on the effects of a consumer's mental health condition(s) on a case-by-case basis.
- 9.5 Multi-disciplinary teams, in which knowledge is shared across a range of practitioners, are common in the mental health field. The assumption that there is a hierarchy of knowledge where, for example, the testimony of a psychiatrist might be given more weight than that of a nurse, should be avoided. If information supplied is unclear or inadequate, further clarification may be sought.

Advisers

- 9.6 Advisers should recognise the importance of evidence collected from health and social care professionals on how particular mental health conditions may impact on money management and debt repayment. But in addition, advisers can work in partnership with these professionals to collectively better support the client overall.
- 9.7 Where appropriate and possible, advisers should use evidence from relevant practitioners listed in 9.2 to support information sent to creditors. Where advisers and creditors agree to review mental health conditions, this should take place through relevant health and social care professionals.

Health and Social Care Professionals

- 9.8 Health and social care professionals working with consumers with mental health conditions should be aware of the inter-relationship between debt and mental health, and how the actions and inactions of creditors and consumers can exacerbate a condition.

It is important to be aware that the actions of creditors can be influenced positively by evidence of how a consumer's condition may affect their ability to manage money and repay debts. It is therefore important that practitioners working with consumers with mental health conditions respond to requests from, or on behalf of, consumers for information that can support the ongoing dialogue between the consumer (or their adviser) and their creditors.

Practitioners should consider carefully how any charge for this service might negatively affect the consumer's financial situation and balance this with the potential for being able to give better support.

10

How to deal with charging for evidence

If a creditor requires evidence that is only available on a charging basis, they should be prepared to consider payment proposals made by health or social care practitioners on a case-by-case basis²⁷.

- 10.1 As a general rule for any party seeking evidence from a health or social care professional, an unsolicited offer of payment is not advisable, as this practice risks creating expectations that fees can be charged as standard.

Creditors

- 10.2 If there is a charge, creditors have four options²⁸:
- Make the payment to recognise the time spent by the professional;
 - Ask the consumer to approach an alternative professional who may decide not to charge;
 - Explain the health benefits resulting from the evidence being sought;
 - Use information already gathered.
- Whichever option is chosen, creditors should not pass on charges for medical evidence to the consumer.

- 10.3 Because payment is usually requested in advance, creditors might have understandable concerns about how they ensure the appropriate quality or comprehensiveness of the evidence they receive in return for the fee. Use of the MALG Debt and Mental Health Evidence Form will support the consistency, clarity and relevance of evidence collected.

However, at this stage it would be useful for creditors to review the need for a completed DMHEF and whether the condition could be verified through other means.

- 10.4 In some cases, in order to confirm that a consumer's mental health conditions could adversely affect their ability to manage their finances creditors may choose to rely solely on the information provided in Appendix 1 to these Guidelines²⁹, without reference to external, individualised evidence. However, in cases where a creditor is not using this information simply as positive corroboration – but remains to be convinced – they should seek third-party evidence.

²⁷ Please see the *Primary Care Guidance on Debt and Mental Health* www.rcpsych.ac.uk/pdf/factsheet_debtandmentalhealth2014.pdf

²⁸ See Step 8 of *Lending, debt collection and mental health – 12 Steps for Treating Potentially Vulnerable Customers* Fairly 2nd edition Royal College of Psychiatrists November 2014

²⁹ Please note that Appendix 1 does not provide an exhaustive list of conditions. The absence of a particular condition from the glossary does not indicate that it will not affect a consumer's ability to manage money.

11

Using common financial tools

Health and Social Care Professionals

- 10.5 In considering whether to charge for such evidence, health and social care professionals could help consumers by:
- Considering each request for medical evidence on a case-by-case basis rather than implementing a blanket policy;
 - Investigating whether the consumer can afford to pay, especially when the request is related to serious financial difficulty;
 - Recognising that many advice services that support consumers are charities with limited resources;
 - Understanding that medical evidence could help creditors 'do things differently' by taking the consumer's health into account;
 - Reflecting on the potential health benefits that dealing with their debt could bring to the consumer. In many cases, the decision not to charge for medical evidence could significantly help the patient³⁰.

Advisers

- 10.6 The majority of advisers may not be asked for a fee particularly if they clarify that they are a charity with no resources to pay fees. Where an adviser is presented with a request for a fee, it may be helpful to undertake some local 'social policy' work with the particular health professional or health professional practice, to help them understand how providing such evidence for free is better for the patient's health as well as for their financial position. Successful social policy work will also enable future clients to access free evidence from those health professionals.

When they prepare financial information in support of a consumer's repayment offers or other forms of negotiation³¹, advisers and creditors should be encouraged to use the common financial tool developed by the advice sector and facilitated by the Money Advice Service. Alternatively they could use a statement format that conforms to the general principles of the tool.

- 11.1 Advisers and creditors should consider any guidance that is provided with the common financial tool in terms of the options available to a specific consumer³².

³⁰ This section is discussed in MALG Briefing Note 3.

³¹ The Accountant in Bankruptcy in Scotland will adopt a common financial tool in April 2015. A new common financial tool is likely to come into effect in the remainder of the UK later in 2015 until then the Common Financial Statement or its equivalent will apply.

³² <http://www.cfs.moneyadvicetrust.org>

12

How to treat benefits when assessing disposable income

It should be recognised that the issue of whether and how much certain benefits should count towards disposable income for the purposes of paying off debt are the consumer's choice alone.

- 12.1** These 'certain benefits' include: Personal Independence Payment (PIP), Disability Living Allowance (DLA), Attendance Allowance (AA) and equivalent benefits which cannot be paid to the debtor at the same time ie Constant Attendance Allowance (under the Industrial Injuries or War Pensions Schemes) and War Pensioners Mobility Supplement (under the War Pensions Scheme).
- 12.2** Lump sums that are disregarded in insolvency should be disregarded as an asset. Such lump sums are: grants for the use of a vehicle, Armed Forces Independence Payments and backdated lump sum payments of Personal Independence Payment (PIP), Disability Living Allowance (DLA), Attendance Allowance (AA), and equivalent benefits which cannot be paid to the debtor at the same time ie Constant Attendance Allowance (under the Industrial Injuries or War Pensions Schemes) and War Pensioners Mobility Supplement (under the War Pensions Scheme).
- 12.3** Creditors should note that payment of Universal Credit, income replacement benefits and in-work tax credits are made in arrears. Decisions on awards may be subject to delays; if the consumer has exercised the right to dispute the decision, it may be some significant time before a final decision is made. Consumers in receipt of out-of-work benefits may find themselves transferred from one benefit to another. Others may find themselves subject to a benefit sanction. Creditors are asked to recognise that in such cases, the consumer may be left without sufficient resources to meet payment of essential bills and other living expenses. In such circumstances it may be appropriate to place a hold on collection until such time that action can be taken to resolve the indebtedness or that the consumer's circumstances improve and payment can recommence.
- 12.4** As the introduction to these Guidelines clarifies, the recommendations enshrined in the Guidelines apply solely to the circumstances of consumers who are already in debt, and not to the circumstances prevailing at the time an application for credit is made. Therefore, this Guideline does not apply to the presentation of income information, including the 'disposability' or otherwise of the benefits listed in 12.1 and 12.2 above, at the point of entering into a contract.

- 12.5 The benefits in 12.1 and 12.2 are specifically awarded to compensate for the extra costs associated with the care (and sometimes mobility) needs of people with disabilities. So, a consumer in debt who is in receipt of one or other of these benefits would be perfectly entitled to treat their entire award as non-disposable income³³. However, some claimants might feel that the quality-of-life benefits of using a proportion of their award to pay off debts would be of sufficient magnitude to justify them doing so.
- 12.6 In situations where priority debts are involved, a discussion between the creditor, the consumer and/or their adviser regarding the use of the benefits in 12.1 and 12.2 might be appropriate, given the additional risks associated with non-payment of priority debts.
- 12.7 The benefit awards in 12.1 and 12.2 can be revised downwards or removed by the awarding body (for reasons that may not have anything to do with any variations in the effects of mental health conditions). Should this occur when a claimant has been using some of their award to repay debt, it means that income and expenditure, and debt repayment levels will need to be re-assessed.
- 12.8 It should also be noted that there are a number of other benefits that may be claimed by individuals who are unwell. These include: Statutory Sick Pay, Employment and Support Allowance (previously known as Incapacity Benefit), Severe Disablement Allowance, Industrial Injuries Disablement Benefit and (for some claimants) additional disability-related elements of Tax Credits and Universal Credit. If an individual is in receipt of any of these benefits, and it is brought to the attention of the lender, discussions need to take place about their significance in meeting additional disability related expenses. These might involve the nature of their condition or disability and how the additional income meets additional expenses arising from that disability – for instance, paying for taxis for someone whose anxiety-related condition prevents them travelling to work by public transport.
- 12.9 Receipt of any of the additional benefits listed in this section may require an adviser to provide additional clarification for areas of higher spends by consumers (above present trigger figures³⁴). It may also require a creditor to consider higher areas of expenditure by the customer as a means of mitigating the impact of the disability.

³³ Insolvency Guidance V12 October 2013

³⁴ See footnote 31 for developments and footnote 32 for guidance

13

When to consider 'writing off' debts

Creditors should consider 'writing off' unsecured debts when mental health conditions are long-term, hold out little likelihood of improvement, and are such that it is highly unlikely that the person in debt would be able repay their outstanding debts³⁵.

- 13.1** The request for a 'write off' is a last resort when the consumer's mental health condition is serious enough to merit a 'write off' and/or the consumer has little or no disposable income, no significant available assets and an insolvency remedy is not an appropriate option. The creditor should consider fully 'writing off' the debt so that the balance is set to zero or nil, and that no further payments are due. This should be reported to the consumer and relevant third parties including credit reference agencies and the consumer's authorised adviser. However, if collection of the account is simply frozen or if any balance remains outstanding and collectable, this should be made clear to the consumer and any adviser, professional or carer authorised to deal with case, and the consumer should be told who they should communicate with about the account.
- 13.2** If the consumer is a homeowner and unable to table an offer or physically make a payment, a creditor will decide whether or not to obtain a charging order taking into account the following factors:
- the action is proportionate to the debt;
 - the order is subject to the understanding that the final amount of the debt is decided at the point of judgment and the creditor will not seek to charge running interest as a separate debt;
 - the creditor should only consider seeking an order for sale after taking account of the consumer's condition, and only then as a last resort, having explored all other possible options.
- 13.3** Other creditors with priority status that may enable enforcement of their debt against a consumer, should, when considering recovery options, have due regard to the principle that "any enforcement action is proportionate to the debt" and also the personal health and well-being of the consumer.

³⁵ Firms should also have regard to FCA CONC 7 dealing with arrears, default and recovery, including treating customers in default or in arrears difficulties with forbearance and due consideration.

14

Taking court action as a last resort

Where a creditor is made aware that a consumer has a mental health condition, they should only initiate bankruptcy proceedings, court action or pursue enforcement through the courts as a last resort, and when it is appropriate and fair to do so³⁶.

- 14.1 In making a decision about whether to initiate court action or bankruptcy proceedings, a creditor should take into account the appropriateness of taking that action in the light of any relevant evidence they might have.
- 14.2 Decisions should seek to prevent:
- Unnecessary action that might further harm particularly vulnerable consumers;
 - Action that exacerbates problems arising from temporary financial difficulties;
 - Action where other alternatives have not been considered.
- 14.3 A creditor should make every effort to reach a reasonable negotiated settlement with the consumer before proceeding to bankruptcy proceedings, court action or enforcement through the courts.

- 14.4 A creditor should ensure that particularly vulnerable consumers are identified before enforcement action is taken against goods. This should ensure that where enforcement action may cause undue suffering or distress, consumers have access to advice and assistance³⁷.

Enforcement companies

- 14.5 Enforcement companies should ensure that staff are trained to recognise vulnerability that affects the consumer's ability to manage money and ensure people with mental health conditions get access to free advice³⁸.

Local Authorities

- 14.6 In some local authority areas, recent changes to benefits have led to more people with mental health conditions facing reduced Council Tax Support payments. If a resident with mental health conditions is unable to maintain payment of council tax due, local authorities are asked to take full account of their vulnerability by keeping enforcement action restricted to, where possible, attachment of benefits/earnings orders.
- 14.7 Where an attachment order is not possible, local authorities are asked to give consideration to using their discretionary powers to write off arrears and the remainder of the amount owing for the rest of the financial year under 'hardship powers'. This should result in a reduction of enforcement action and distress to vulnerable consumers through the Committal Court process.

³⁶ See also FCA CONC 7

³⁷ Reg 4 (1) Exempt Goods, Taking Control of Goods Regulations 2013 SI No 2013/1894
www.legislation.gov.uk/uksi/2013/1894/made

³⁸ National Standards for Enforcement Agents April 2014- being updated 2015

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- 14.8 Some people may be failing to claim Council Tax Support and the Council Tax Reduction Scheme (both of these replaced Council Tax Benefit), as well as other relevant rebates. For example, an individual with an incapacity can have their property put in a lower council tax band; a Single Person's Discount may be applicable; or the consumer may qualify for a Severe Mental Impairment disregard in respect of liability.
- 14.9 Local authorities are asked to use enforcement agents only as a last resort and to make sure they are trained to recognise vulnerability. In these circumstances local authorities should consider removing the account from enforcement agents and applying either an attachment of benefit /earnings order, or in cases of hardship, use powers to write off the debt.

Bankruptcy – the Scottish position – As from 1st April 2015 the implementation of the Bankruptcy and Debt Advice (Scotland) Act 2014

- 14.10 With the implementation of the above Act the bankruptcy landscape in Scotland will change. Debtors will not be able to apply for bankruptcy unless they have obtained advice from an approved money adviser and the money adviser must include a declaration that advice has been given. It will be compulsory for all advisers to assess debtors' income by using the Common Financial Tool (CFT).

There will be three 'routes' into bankruptcy:

- a. Minimal Asset process: this replaces the Low Income Low Asset procedure. To qualify for a MAP the minimum debt level will be £1,500 with a maximum debt level of £17,000 and the debtor has been on benefits for the previous 6 months or

having been assessed by the CFT as having no disposable income. Automatic discharge will be granted after 6 months with conditions applying for a further 6 months. The fee to enter MAP will be £90. Only one application in 10 years can be made.

- b. Apparent Insolvency: this route into bankruptcy will remain with the proviso that the debtor obtains advice from an approved adviser. Apparent insolvency is generally established with the service of a 'Charge for Payment', (which has expired) by the creditor following on from the granting of Decree, or in the case of a local authority, by summary warrant. The Charge will have expired without an agreed payment being made and the Charge can then be used as proof of Apparent Insolvency. The fee to enter this route will be £200 and the debtor must owe at least £3,000.
- c. Certificate for Sequestration: where the debtor cannot prove apparent insolvency nor do they meet the MAP criteria then a Certificate for Sequestration may be an appropriate route into bankruptcy. Only an approved adviser can grant the certificate, which will state that, based upon the information given to the adviser, the debtor is unable to pay debts as they fall due. The fee for bankruptcy is £200 and the debtor must owe at least £3,000. There is no statutory fee to the Accountant in Bankruptcy in respect of the Certificate for Sequestration.

NOTE there may be mandatory financial education for some debtors specifically if the pattern of behaviour of the debtor either before or after the date of sequestration suggests they would benefit from it. An example is where a debtor has had a Bankruptcy Restriction Order applied.

APPENDIX 1

A selected glossary of terms used when describing mental health conditions

Addictions are where people develop conditions arising from the use of harmful or addictive substances. These can include alcohol, illegal or street drugs, prescription and over-the-counter medicines, and volatile chemicals. The resulting conditions can include both mental and physical illnesses and health difficulties, as well as family, housing, employment and legal difficulties. In recent years, the definition of addictions has broadened to include behavioural addictions such as gambling.

Affective disorder is a term used for any disorder of mood such as depression, hypomania, bipolar disorder and seasonal affective disorder.

Alzheimer's disease is a condition causing loss of memory, intellectual decline, changes in personality and behaviour, and an increased reliance on others for activities of daily living. It is a form of dementia.

Anorexia nervosa is an illness involving an intense fear of being fat, distorted body image, under-eating and excessive weight loss.

Anxiety is a feeling of unease, apprehension or worry. It may be associated with physical symptoms such as rapid heartbeat, feeling faint, or trembling. It can be a normal reaction to stress or worry or it can sometimes be part of a bigger problem. Just under 5 per cent of adults experience a generalised anxiety disorder in a year (HSCIC, 2009).

Auditory hallucination means hearing a voice or sound when there is nothing there.

Binge eating involves uncontrollable episodes of eating very large quantities of food over a short period of time. It occurs in bulimia.

Bipolar disorder is a condition in which people have mood swings that are far beyond what most people experience in the course of their lives. These mood swings may be low, as in depression, or high, as in periods when we might feel very elated. These high periods are known as 'manic' phases. Many sufferers have both high and low phases, but some will only experience either depression or mania. Bipolar disorder used to be referred to as 'manic depression'. Around 1-3 per cent of people experience bipolar disorder during their lifetime (Coid et al, 2006).

Bulimia is an eating disorder characterised by binge-eating, vomiting, purging by making oneself sick, or abusing laxatives. Just over 1.5 per cent of adults experience an eating disorder in a year (HSCIC, 2009).

Capacity is the ability to understand and take in information, weigh up the relative pros and cons, and reach an informed decision about a given issue.

Dementia is a condition in which there is a gradual loss of brain function. The main symptoms are usually loss of memory, confusion, problems with speech and understanding, changes in personality and behaviour, and an increased reliance on others for activities of daily living. There are a number of causes of dementia. Alzheimer's disease is the most well-known form of dementia. One in every 79 (1.3 per cent) of the UK population were living with dementia in 2013, rising to 1 in 14 people among those aged 65 years or over (Alzheimer's Society).

Depression is a condition where the main symptoms are feeling low, sleep problems, loss of appetite, concentration, and energy. Just over 2.5 per cent of adults experience depression on its own in a year (HSCIC, 2009). Depression with anxiety is experienced by just under 10 per cent of adults in a year (HSCIC, 2009).

APPENDIX 1

Hypomania is a state of high mood that is not quite as severe as mania.

Mania is a state of extreme and persistent over-activity and high mood. It is regarded as the opposite of depression.

Obsessive compulsive disorder is a condition where people experience 'obsessions', ie, recurring unwanted thoughts that are difficult to stop, and 'compulsions', ie, rituals of checking behaviour or repetitive actions that are carried out in an attempt to relieve the thoughts. Just over 1 per cent of British adults experience obsessive compulsive disorder in a year (HSCIC, 2009).

Panic attacks are intense and sudden feelings of fear and anxiety. They are associated with many physical symptoms such as rapid heart beat, trembling, rapid shallow breathing, pins and needles in the arms, and feeling faint. Many people who have a panic attack fear that they will collapse or die. These attacks are not harmful and usually go away within 20-30 minutes. Just over 1 per cent of people experience panic disorder in a year (HSCIC, 2009).

Paranoid psychosis is a condition whose major symptoms are hallucinations and delusions, often with a change of mood. It is very similar to schizophrenia.

Personality disorder describes someone who has severe disturbances of their character and behaviour. Personality disorders usually appear in late childhood or adolescence and continue into adulthood. The thought patterns and behaviours cause distress to the person or to those around them. Around 3-5 per cent of people experience personality disorder during their lifetime (Coid et al, 2006).

Phobia is an irrational and intense fear of a situation or object. Around 2.5 per cent of adults experience phobias in a year (HSCIC, 2009).

Postnatal depression is a mental condition that occurs within the weeks or months after childbirth. Around 10 per cent of women have PND after having a baby (RCP, 2006).

Psychosis is a condition in which a person is not in contact with reality. Symptoms can include sensing things that aren't really there (hallucinations); having beliefs that aren't based on reality (delusions); having problems in thinking clearly, or not realising that there is anything wrong with oneself (called 'lack of insight').

Puerperal psychosis is a mental condition that can affect women after childbirth. The symptoms are usually severe depression or mania, often with psychotic features.

Schizophrenia is a mental condition whose main symptoms are hallucinations (hearing voices), delusions (a firm belief in something that isn't true) and changes in outlook and personality. Around 1-3 per cent of people experience schizophrenia during their lifetime (Coid et al, 2006).

Self-harm occurs when people who feel sad, desperate, angry or confused, hurt themselves. Some people harm themselves by taking an overdose or other poisonous substances; others by injuring themselves (usually by cutting parts of the body). Around 3 per cent of people self-harm during their lifetime (HSCIC, 2009).

APPENDIX 2

Different types of health and social care professionals

The following list of definitions is intended to help the reader understand the respective roles of various types of health and social care professionals. People with mental health conditions who are under the care of the Health Service and/or Social Services, may be in contact with one or a number of these professionals at any one time, depending on their circumstances and their needs.

It is also worth reiterating that multi-disciplinary team working is common in the mental health field. This means that different professionals may deal with, or primarily specialise in, particular aspects of a person's treatment or care, but may at the same time also be in regular contact/liaison with colleagues as part of an overall package of support.

Social workers

Most mental health social workers are based in multi-disciplinary community mental health teams. They can deal with social problems, such as those associated with housing, money, and employment, and may also control access to appropriate social and community sector support services.

Care coordinators

A care coordinator is someone named as the main point of support contact for a person who needs ongoing care. The care coordinator can be a nurse, social worker, or other mental health professional.

Clinical psychologists

Clinical psychologists use their understanding of human emotions, thinking and behaviour to assess people's mental health and social

needs, plan care and deliver evidence-based psychological therapies and interventions. Clinical psychologists work both in hospitals and community settings but, unlike psychiatrists, do not prescribe medication.

Community psychiatric nurses

A community psychiatric nurse (CPN) is a registered nurse with specialist training who works in the community. Some are attached to GPs' surgeries, community mental health centres or psychiatric units.

Nurses in psychiatric hospitals

These nurses work in hospital settings and assess the needs of all patients on in-patient wards. Often, a nurse will take responsibility for a patient on the ward and will liaise with community-based colleagues regarding the care that will be provided when the patient is discharged.

General practitioners (GPs)

Although GPs can deal with most mental health conditions without referring the patient elsewhere, they often work in teams with other professionals, such as health visitors, nurses and mental health practitioners.

Psychiatrists

Psychiatrists are qualified medical doctors who look after patients with mental health conditions. Working both in hospital settings and community teams, psychiatrists work with other professionals to address patients' health and social needs. Psychiatrists are able to prescribe medication.

Occupational therapists

Occupational therapists work in hospitals and community settings, and help people to adapt to their environment and cope with daily life. They may also take part in therapeutic and rehabilitative activities with patients.

APPENDIX 2

Other professionals include:

- a range of other therapists who also support people with mental health conditions – such as art, music and drama therapists;
- ‘recovery workers’ who provide support to help independent living – for instance, helping someone return to education or to travel independently;
- ‘peer support workers’ who have personal experience of mental distress and are employed by mental health organisations to help individuals with mental health conditions to recover.
- ‘high-intensity therapists’ who are trained in cognitive behavioural therapy, and ‘psychological wellbeing practitioners’ who work to treat people with anxiety and depression.

APPENDIX 3

The Money Advice Liaison Group Mental Health Working Party

Chair

Joanna Elson Money Advice Trust

Secretary

Marie Coles Secretary to Money Advice Liaison Group

Henry Aitchison Finance & Leasing Association

Dan Alchin EnergyUK

Matt Burgum Council of Mortgage Lenders

Rob Chaplin Royal College of Psychiatrists

Alistair Chisholm Citizens Advice

Chris Fitch Royal College of Psychiatrists

Yvonne MacDermid Money Advice Scotland

Robert Wilson The Institute of Money Advisers

Katherine Rock Money Advice Trust

Anthony Sharp Chair, MALG

Colin Trend AdviceUK

Peter Tutton StepChange Debt Charity

Peter Wallwork Credit Services Association

The MALG Mental Health Guidelines Updating Working Team

Chair

Anthony Sharp Chair, MALG

Secretary

Marie Coles Secretary to The Working Team

Frances Harrison Project Manager & drafts person

Chris Fitch Royal College of Psychiatrists

Emma Burke HSBC

Mark Newbury Active Inclusion,
Newcastle City Council

Charlotte Pedder dlc

Katherine Rock Money Advice Trust

Colin Trend AdviceUK

Diane Williams Data protection expert

APPENDIX 4

In the 2009 edition of these Guidelines various items were listed as tabled by the MALG Mental Health Working Party for further discussion and potential exploration. Below is a short update on those, listed together with further items that MALG is considering taking forward in the coming months.

Update

1 Lending decisions

The 2009 Guidelines stated that it was acknowledged by the Mental Health Working Party that money problems can be compounded by fresh offers of credit being made to people already in debt. However, it was agreed that the specific issues raised by any 'fresh' credit applications and offers, such as squaring the respective implications of the Mental Capacity Act, mean that this area should be dealt with separately.

It has been agreed that the focus of MALG's work would always be on the good practice of handling financial problems arising after a decision to lend had been taken.

The Office of Fair Trading produced Guidance entitled *Mental Capacity – OFT Guidance for Creditors* in September 2011, many parts of which have been incorporated into the FCA's CONC Sourcebook. MALG therefore does not intend progressing further with this particular matter.

2 Amending the Guidelines to support people with physical disabilities

MALG believes that its stance on supporting people with physical disabilities as outlined in the 2009 Guidelines is still valid:

"Physical disability as such is not generally a direct cause of people getting into debt although we acknowledge the strain that physical disability can put on household budgets. Likewise debt is not of itself a cause of people becoming physically disabled. It could well be that many physically disabled people also experience mental health problems that cause them difficulties in handling their financial affairs and paying their debts. If this is the case, these Guidelines will naturally cover such consumers and how they should be treated."

3 Developing and maintaining a database of nominated creditor mental health contacts

A database exists for the advice sector of creditor contacts and is held and organised by Citizens Advice. It is available to all free-to-client debt advice agencies.

4 Developing a national mental health and debt training strategy to meet the respective needs of the creditor, advice, and health and social care sectors

The Money Advice Trust and the Royal College of Psychiatrists have developed a high quality classroom course in this area which together with an e-learning facility course is proving very popular.

Further items

5 Vulnerability

The MALG guidelines will in due course be reviewed in the light of the FCA's Occasional Paper on Consumer Vulnerability published in February 2015 and, if it is considered appropriate, action will be taken to ensure its continuing compatibility.

APPENDIX 4

6 Continuing to extend the scope and content of the Guidelines to other creditors and other interested parties

The updated Guidelines focus heavily on ensuring they relate to the widest interpretation of creditors, including the utilities, the telecoms industry, local authorities and government.

MALG believes that further opportunities should be explored to embed the Guidelines adopted by the financial sector into this wider partnership of creditor organisations and their respective trade bodies. Local authorities, in particular, have departments seeking to support these consumers through re-housing or social care, but equally have a need to directly recoup Council Tax from local taxpayers and work with enforcement agents in a sensitive way.

Every effort will also be made to engage with the National Health Service so that those involved in caring for individuals with mental health conditions are made aware of the existence and contents of these Guidelines.

7 Third Party Information

Creditors' customers/advisers' clients are not the only people who can disclose a mental health condition to a creditor or adviser. Family members, carers, and other third parties are also in a position to inform creditors or advisers about situations where, for example, a family member or friend is unable to manage their money due to a mental health condition. However, where a third party does not have a mandate or authority to discuss such an individual's situation with the creditor or adviser, this can result in a situation where the adviser or creditor feels unable to record or act upon this information. In such situations, the needs of the individual may often not be addressed, and the creditor or adviser feels unable to take action that could help them. In light of this, MALG will consider this issue in detail for both advisers and creditors.

APPENDIX 5

Endorsements from financial sponsors



1st Credit®

Endorsements from mental health organisations



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MALG members

Association of British Credit Unions Ltd

Accountant in Bankruptcy

Advice Services Alliance

AdviceUK

AdviceNI

Association of Arrears Mediators

Association of British Insurers

Association of Professional Debt Solution
Intermediaries

BCCA

British Bankers' Association

British Retail Consortium (The Mail Order Traders
Association)

Building Societies' Association

CallCredit PLC

Chartered Institute of Credit Management

Christians Against Poverty

Citizens Advice

Citizens Advice Northern Ireland

Citizens Advice Scotland

Civil Court Users Association

Civil Enforcement Association

Consumer Credit Association (UK)

Consumer Credit Trade Association

Consumer Finance Association

Council of Mortgage Lenders

Credit Services Association

Debt Managers Standards Association

Debt Resolution Forum

Department of Business, Innovation and Skills

Department for Work & Pensions

Energy UK

Equifax Ltd

Experian Ltd

Financial Conduct Authority

Finance & Leasing Association

Her Majesty's Revenue & Customs

Her Majesty's Treasury

High Court Enforcement Officers Association

Information Commissioner's Office

Insolvency Service

Institute of Money Advisers

Institute of Revenues, Ratings & Valuations

Legal Aid Agency

Lending Standards Board

Local Authority Civil Enforcement Forum

Ministry of Justice/Her Majesty's Courts
& Tribunals Service

Money Advice Scotland

Money Advice Service

Money Advice Trust

National Association of Student Money Advisers

National Debtline

PayPlan

R3 (The Association of Business Recovery
Professionals)

Society Of Messengers-At-Arms and Sheriff Officers

StepChange Debt Charity

Trading Standards Institute

UK Cards Association

Water UK

Money Advice Liaison Group

Email: info@malg.org.uk

www.malg.org.uk

