Australian Banking Association

Industry Guideline

Industry Guideline: Sale of unsecured debt

This voluntary Industry Guideline complements the provisions of the Banking Code of Practice (**the Code**) set out in Chapter 14 (Customers who may be vulnerable), Chapter 41 (Financial Hardship) and Chapter 43 (Recovering a Debt). This guideline reflects good industry practice and the ABA encourages members to use this guideline to set internal processes, procedures and policies.

This Guideline should be read in conjunction with the:

- Banking Code of Practice
- ABA Industry Guideline: Financial abuse and family and domestic violence policies.

Implementation

This Guideline will commence operation from 1 March 2020. Contractual arrangements with some debt buyers may not be able to be updated until their contracts are renegotiated. Some necessary changes may not be able to be made until after the 1 March 2020 implementation date – where this is the case banks will endeavour to comply with the guideline on a best endeavours basis in the first instance and where it is brought to their attention that they have not complied with the guideline, they will promptly rectify this issue for the customer.

Purpose

Chapter 43 of the Code governs what a bank will do when it is recovering a debt. The Code promises that banks will comply with the ACCC and ASIC's *Debt Collection Guideline: for Collectors and Creditors* and the Department of Human Services *Code of Operation*, and if they sell debt to another party, only choose a party that has also committed to complying with these requirements.

The banking industry has a range of customer safeguards in place when collecting debts. However, the industry understands that customers who are unable to repay their debts may be experiencing vulnerability and/or significant financial hardship and therefore extra care may need to be taken.

This Industry Guideline is intended to outline additional safeguards for customers when banks are selling unsecured debt to another party.

Where this Guideline refers to *debt buyers* it is intended to refer to any third party a bank sells a debt to.

Policies and contractual arrangements

Each bank should develop an internal policy that documents the matters outlined in this guideline. Each bank should ensure that relevant staff are adequately trained on the provisions of that policy and that adherence to the policy is considered through the bank's internal assurance processes.

Banks should also consider how to include aspects of this guideline in their contractual arrangements with debt buyers.

Prior to sale of unsecured debt

During the collections process, where a bank is able to make contact with the customer and the customer is willing to disclose their total indebtedness with the bank, the bank should consider whether regulation and internal lending criteria allow restructuring of the customer's debt to make repayments more affordable. Banks may only know about a customer's other debts, including other debts with the bank, if the customer tells the bank.

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Under the Code (Chapter 43) ABA member banks have committed to not selling the debt of a customer while considering their financial situation, while working with the customer to find a sustainable solution to their financial difficulties or while the customer is complying with a hardship arrangement agreed between the bank and a customer[1]. This should apply even when the hardship arrangement relates to another debt held with the bank.

ABA member banks will not sell debt if:

- the debt is statute-barred, or
- the customer is in the process of disputing that they owe the debt and the bank has not yet finalised its consideration of the issue.

Selection and monitoring of debt buyers

Bank policies should set out minimum selection criteria for debt buyers and should include:

- Stipulations as per paragraphs 180 – 182 of the new Code, which require debt buyers used by member banks to comply with the ACCC's and ASIC's debt collection guidelines and the Code of Operation.
- Alignment between the individual bank's corporate values and those of the debt buyers they are contracting with, and the importance of being customer-focussed, as assessed by the bank during the tender process and during on-going audits. Further to this, banks should reassess their relationships with debt buyers if there is significant evidence of a misalignment between the bank's corporate values and the behaviour of the debt buyer.
- A requirement that debt buyers comply with ASIC Regulatory Guide 165 and are members of the Australian Financial Complaints Authority (**AFCA**) or another external dispute resolution scheme.

When contracting with debt buyers for the sale of unsecured debt, banks should have processes in place to monitor how debt buyers are undertaking their collections activities. These processes should include, at a minimum, mandatory reporting of:

- Volumes of and the types/nature of complaints and targeted audit (by the bank) of complaints handling.
- The number and types of actions being taken by the debt buyers including litigation, enforcements (specifying the number and type, including sequestration orders, garnishee orders, charging orders, instalment orders, writs of possession of goods, writs of possession of property etc.) and bankruptcy applications.
- Results of annual audits to ensure compliance with regulatory and contractual obligations.
- Results of due diligence activities (e.g. internal and/or independent audits customer surveys/NPS, internal quality control) undertaken to meet and monitor compliance with regulatory and contractual obligations.

On sale of debt

When a debt is sold, the bank will provide the debt buyer, on request, with a copy of the following documents in their possession and within 30 days:

- The contract under which the debt arose – including terms and conditions.
- Statement of account evidencing current arrears.
- Details of any hardship arrangements in the preceding 12 months.

[1] Except as part of a funding arrangement (for example a securitisation or covered bond) or as part of a business sale or restructure.

Bankruptcy proceedings initiated by debt buyers

Banks recognise that initiating bankruptcy proceedings, especially in relation to unsecured debt, is a serious step that has significant repercussions for their customers. Where a debt buyer believes that commencing bankruptcy proceedings is necessary to recover an unsecured debt, banks will require that the debt buyer consults with them prior to commencing these proceedings. As part of this process, the debt buyer should explain to the bank what they know about the customer's circumstances and why they believe bankruptcy is the most appropriate option at this stage. Should the bank identify a vulnerability they will have the option to consider whether to buy back the debt under their contract with the debt buyer.

Threshold for creditor petitions

The Bankruptcy Act 1966 (**Bankruptcy Act**) prescribes a minimum level of debt ($5,000) for a creditor petition.

All ABA member banks should determine and document an appropriate amount of unsecured debt to apply in their business and through arrangements with debt buyers. If the bank considers that a higher minimum debt level is appropriate before a creditor petition should be issued, then they should document that both in their internal procedures and in their contractual arrangements with debt buyers.

Customers experiencing vulnerability

Under the ABA's Industry Guideline: *Financial abuse and family and domestic violence policies*[2] (the family and domestic violence guideline), banks have committed that where they are made aware that a customer's debt involved family and domestic violence the debt will not be sold to a debt buyer. If a debt has been sold to a debt buyer and the bank becomes aware that the debt involved family and domestic violence, the bank will work with the debt buyer to provide the best outcome for the customer. This may include repurchasing the debt.

If a debt relates to a customer experiencing vulnerability and the bank is of the view that the vulnerability is likely to be ongoing and that there is no reasonable prospect of the debt being recovered, then the bank should not sell that debt to a third party.

Banks believe that in addition to situations involving family and domestic violence, there are other vulnerable circumstances that a customer may be experiencing where the bank should not sell a customer's debt to a third party, or where they become aware of the situation after selling the debt, they should work with the debt collection agency to ensure a good outcome for the customer.

Banks should ensure their policies and procedures set out under which circumstances they may apply these extra protections to the customer. Examples of circumstances that banks should consider when creating these policies and procedures include when a customer:

- is elderly
- is suffering from a form of financial abuse
- is homeless
- is terminally ill, or
- has a serious disability or mental illness.

This list is not intended to be exhaustive and banks should consider each customer's circumstances individually. It is important to note however, that the bank may not be aware of a customer's circumstances and therefore unable to take them into account when selling the customer's debt unless the customer tells the bank.

[2] http://www.ausbanking.org.au/images/uploads/ArticleDocuments/207/ABA_Industry_Guideline_-_Financial_Abuse_and_Family_and_Domestic_Violence%20Nov%202016.pdf

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National Redress Scheme

The National Redress Scheme - for people who have experienced institutional child sexual abuse - started on 1 July 2018 and will run for ten years. Each ABA member banks is treating Scheme payments sensitively. Each bank is also working – on a best endeavours basis – to provide protection for identified Scheme payments, so that customers are not required to use these payments to repay debts owing to that bank, unless the customer wishes to use their payment for that purpose.

Banks will, where possible, ensure this approach is also taken by debt buyers they contract with.