

# Covid-19 key considerations

A way forward

The Covid-19 Pandemic and the measures taken to limit the spread of the virus have created unprecedented levels of worry, uncertainty and financial difficulty for millions of individuals, families and businesses, to which CSA members have already been responding with sensitivity and empathy.

The CSA expects all member firms to continue to review activity and customer treatment paths to ensure that they are doing everything they reasonably can to support consumers and the wider UK community through this difficult time. This should include all appropriate forbearance measures and referrals for independent advice & support.

The Association recognises that different firms will implement this in different ways but all members are encouraged to ensure that activity and treatments are proportionate, take into account the impact of the current pandemic, and do everything possible to support consumers and businesses through the financial and cultural shock which our society is experiencing. Through discussions with members, it is appreciated that a significant number have adjusted their practices to meet the current situation and did so before there was any regulatory expectation or public consensus.

The CSA recognises that it is for members themselves to determine how best to maintain contact with customers during the current crisis. That is provided that the resulting contact is conducted with due regard for the principles of the CSA Code of Practice – empathetically, to a consistently high standard, and with due regard for the interests of both the customer in debt and client, and the exceptional circumstances of the present.

Whether or not contact does start to get back to levels seen before the Covid-19 crisis, members should bear in mind the following elements, in addition to those considerations outlined in the key considerations document that we issued in March 2020.

#### **Additional Key Considerations whilst starting to take early steps out of lockdown**

As we now start to receive guidance from the Government about how lockdown begins to be tentatively lifted over a period of time, every member will need to make key operational decisions about when it is right and proper to resume aspects of the debt collection process including:

- i. The sensitive increase of proactive outbound calling, supported by lettering designed to generate contact, suitably worded to take account of the ongoing Covid-19 issue

- ii. The resumption of more general lettering strategies, to generate contact beyond the initial lettering contact attempt, including discount incentives
- iii. Litigation – this could be particularly sensitive where it is used as a last resort where no response can be secured from the customer
- iv. Enforcement to secure payment after a court order has been obtained – this is likely to be in relation to court orders obtained historically, but will be dependent on when enforcement officers are permitted to resume their field activity
- v. Field based enquiry calls or doorstep collection, as part of a collection strategy to reconnect customers to a call centre or gather information ahead of a decision to litigate or collect cash at the doorstep

#### **a) The sensitive increase of proactive outbound calling**

In addition to the points raised in the earlier 'Key Considerations' document that we issued in March 2020, particularly as now more than ever, it will be critical to consider individual circumstances:

Members are likely to resume or increase levels of outbound calling, either as a result of client instruction or of their own volition. However, in either case they are likely to do so whilst carefully monitoring, to the extent reasonably possible, the incidence of Covid-19 being the direct or indirect cause of the current financial difficulty, as well as expressions of praise or dissatisfaction as a result of calls being made 'during a period of crisis'.

Members should continue to, where possible, monitor praise and dissatisfaction through speech analytics, customer survey, complaints, or a mixture of any of these, and adjust their collections strategies accordingly.

Members may also wish to monitor emerging challenges they encounter such as unusual or severe fluctuations in income and expenditure outside of the normal modelling or uncertainty about employment status.

#### **b) The resumption of more general lettering strategies**

Members are likely to resume lettering strategies to support outbound telephony, suitably worded to take account of the Covid-19 situation, again monitoring reasons for financial difficulty, praise and expressions of dissatisfaction.

Other lettering strategies vary considerably within member firms, but they are likely to consider what other action they consider appropriate to take and ensure their lettering does not reflect action that is not considered appropriate or that they do not intend to undertake at this time.

Where members are required to send statutory notices, consideration should be given as to whether it is prudent or necessary to for additional messaging. For example, if sending a NOSIA on behalf of a client but an arrangement has already been reached, it may be worth a short covering letter explaining that this is a statutory requirement but that the arrangement agreed remains in place.

### **c) Litigation**

Over the past two months, many member firms have, as part of their overall policies of increased forbearance, refrained from initiating new litigation or pursuing cases already commenced. Over the same period, moreover, courts have generally been extremely restricted in their sitting.

Courts are expected over the coming months to gradually increase their capacity to consider cases, but it is likely that there will be a substantial backlog of cases of all sorts and a consequentially slower process than usual in bringing cases to judgement. Members can read about changes to operational performance which appear to be updated reasonably regularly at:

<https://www.gov.uk/guidance/hmcts-civil-business-centres-performance-information>

Member firms should continue to exercise heightened sensitivity and forbearance in relation to litigation, particularly in any cases where customers' financial position and/or physical or mental health may have been affected by Covid-19 and/or the self-isolation rules.

Members may wish to consider allowing a longer waiting period than specified in the Pre-action Protocol and, instead of the specified minimum of 30 days, rather allow 60 or 90 days to enable customers the chance to seek advice (which may currently be harder or slower to obtain than previously).

Firms should apply due rigour and resources when selecting accounts for litigation or resuming litigation. This will include due consideration of whether (if known) customers have been impacted by the pandemic and the FCA's TCF principle. It may also be appropriate to take additional steps to

evaluate the reliability of any data relied upon for the purposes of tracing a customer prior to litigation where tracing is necessary.

In some instances, there may be limitation issues which influence a member's need to litigate. Where this is the case and litigation is only necessary at this point to address limitation periods, firms should consider their ability to stay that litigation when this has been achieved.

#### **d) Enforcement**

There are currently no enforcement visits taking place - the suspension on enforcement visits is imposed under the Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020, which took effect on 29 April. This was an amendment to the Taking Control of Goods Regulations 2013 (TCG 2013), which are the standard operating regulations applying to enforcement agents.

The amending regulation will be in place for the duration of the emergency period. This is defined as the period in which a restriction under reg. 6(1) (or 8(1) for Wales) is in force.

Members specialising in enforcement may be offering alternative attempts to contact customers in debt to 'enforce' an order, but are likely to want to consider the points made elsewhere in this document, depending what they are doing in place of physical visits.

Where members are contacting customers in person, and where it is permissible under Government Guidelines in the relevant jurisdictions, they should do so having regard to relevant health and safety considerations for both employees and customers.

#### **e) Field based enquiry calls or doorstep collections**

It will depend where in the UK the calls are to be made, as it is unlikely to be classed as essential under the current devolved administrations' lockdown rules, but in any case whilst social distancing is required, the challenge will be whether a two metre distance can be maintained whilst attempting to have confidential discussions with the customer, compliant with GDPR.

Members may decide a partial service can be resumed in those parts of the country where it is allowed, to deliver a card in a sealed envelope personally, to try and motivate the customer to make contact, but stop short of attempts to make physical contact.

Government guidance should be followed and attention paid to the Health and Safety requirements.

### Summary

Given the extreme and fast changing environment that we are likely to face for the foreseeable future, Members will need to remain alert and flexible with their strategies and approach. This is especially if there is a second wave of infections, which may be national or local in its impact, and members will need to be able to respond to this. This is an opportunity to show empathy and provide support to customers when they are most likely to need it.

Our sector has a key part to play in navigating the uncertain times ahead; actions taken now will not only support the country during the crisis and contribute to economic recovery, but will also help build and enhance the industry's reputation going forward. The Regulator has made it known that they will be looking at firms throughout the crisis, in order to assess operational resilience and the fair treatment of customers throughout the period.

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