

Chapter 7

Arrears, default and recovery (including repossessions)



7.11 Disclosures relating to “authority” or “status”

7.11.1 **R** When contacting *customers*, a *firm* must not misrepresent its authority or its legal position with regards to the debt or debt recovery process.

[Note: paragraph 3.4 of DCG]

7.11.2 **G** For example, a *person* misrepresents authority or the legal position if they claim to work on instructions from the courts as bailiffs or, in Scotland, sheriff officers or messengers-at-arms, or in Northern Ireland, to work on instructions from the Enforcement of Judgements Office when this is untrue.

[Note: paragraph 3.5a of DCG]

7.11.3 **R** A *firm* must not use official looking documents which are designed to, or are likely to, mislead a *customer* as to the status of the *firm*.

[Note: paragraph 3.3a of DCG]

7.11.4 **R** A *firm* must not falsely suggest or state that it is a member of a trade body or is accredited by a trade body.

[Note: paragraph 3.5c (box) of DCG]

7.11.5 **G** It is an offence under section 17 of the Legal Services Act 2007 to falsely imply that a *person* is entitled to carry on a reserved legal activity, for example, to conduct litigation or to appear before and address a court, or to take or use any relevant name, title or description, for example, “solicitor”.

[Note: paragraph 3.5c (box) of DCG]

7.11.6 **R** A *firm* must not suggest or state that action can or will be taken when legally it cannot be taken.

[Note: paragraph 3.5b of DCG]

7.11.7 **G** Examples of where a *firm* is likely to contravene **CONC 7.11.6 R** include where a *firm* or a *person* acting on its behalf:

- (1) states or implies that bankruptcy or sequestration proceedings may be initiated when the balance of the outstanding debt is too low to qualify for such proceedings;
- (2) states or implies that steps will be taken to enforce a debt where the *customer* is making payments under a Debt Payment Programme Arrangement agreed under the Debt Arrangement and Attachment (Scotland) Act 2002;
- (3) claims a right of entry will be exercised when no court order to this effect has been granted; or
- (4) states that *goods* will be repossessed when they are “protected goods” (as defined under section 90(7) of the CCA) and no specific authorisation to repossess the *goods* has been granted by a court.

[Note: paragraph 3.5b (box) of DCG]

7.11.8

R

A *firm* must not suggest or state that it will commence proceedings for a warrant of execution or an attachment of earnings order when a court judgment has not been obtained, or that it will take any other enforcement action before it is possible to know whether such action will be permissible.

[Note: paragraph 3.5c of DCG]

7.11.9

R

A *firm* must not suggest or state that an action has been taken when no such action has been taken.

[Note: paragraph 3.5d (box) of DCG]