



**Debt Managers Standards Association Limited
(DEMSEA)**

Code of Conduct (the Code)

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1. Introduction

DEMSEA was established in 2000 in order to promote good practice in the debt management industry, and to protect the interests of the public and the creditors to whom they owe money.

Debt Management Companies (DMC's) act on behalf of borrowers to help them clear their debts. They do this by entering into direct negotiations with creditors in order to facilitate the repayment of debts. In return for their services DMC's may be paid a fee by the borrower.

The Code has been developed, and revised, in consultation with lenders and DMC's and will be reviewed on a regular basis with input from appropriate consumer organisations. DEMSEA has received approval of the code from the Office of Fair Trading under its Consumer Code Approval Scheme (CCAS), and in reviewing the Code due consideration has been given to the guidelines provided by the OFT in the "Debt Management Guidance" document issued by them in December 2001, and subsequently updated in September 2008.

The aim of the Code, and that of DEMSEA, is to encourage DMC's to provide services of the highest standards in which the public and the credit industry can have confidence, and to provide a high level of protection to the consumer.

2. Availability of the Code

All members of DEMSEA must make available full details of the Code to consumers, on request, and without charge.

The Code is also available directly from DEMSEA either by post or by downloading from the DEMSEA website, free of any charge.

3. Membership of DEMSEA

DMC's wishing to join DEMSEA and those in membership have to demonstrate that they are able to comply with the standards and requirements set out in the Code, and they undertake to comply in all aspects.

DEMSEA monitors and audits compliance with the Code by its members and has power to discipline any offending members

The Code should be read in conjunction with the **DEMSEA Complaints Handling and Independent Redress Procedures** and the **DEMSEA Compliance and Disciplinary Procedures**, which are binding on all DEMSEA members.

4. Compliance with Statutory Regulations

Members must be licensed appropriately and carry out their business in accordance with the requirements of the Consumer Credit Act 1974, taking account of the reforms introduced by the Consumer Credit Act 2006.

Members must also comply with any other regulations which may apply, including the Data Protection Act 1998, Consumer Protection Act 1987, Financial Services (Distance Marketing) Regulations 2004, Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contracts Regulations 1999, Supply of Goods and Services Act 1982 and any further enactments thereof.

5. Compliance with OFT Debt Management Guidance Notes

It is a requirement of membership of DEMSA that the “Debt Management Guidance Notes” published by the OFT in December 2001, and any future issues, revisions or commentaries are fully complied with. (See Debt Management Guidance, September 2008 – OFT 366) The Debt Management Guidance places important obligations on DEMSA members, to which reference is not always made in the Code. To that end, whilst the DEMSA Code of Conduct is an extension of, and in addition to these guidelines, where any point is not specifically covered in the Code, then the relevant part of the Debt Management Guidance Notes must be observed.

The Debt Management Guidance Notes are available by following the link from the DEMSA website, www.demsa.co.uk or by visiting the OFT website, www.of.gov.uk.

6. Training

- Members must be able to demonstrate to DEMSA that they provide their staff with sufficient and appropriate training to enable them to carry out their work efficiently and to acceptably high standards.
- All staff employed by members must be aware of the existence and terms of the DEMSA Code of Conduct, and the Debt Management Guidance Notes, and be made aware of their specific responsibilities in ensuring that the Code and Notes are adhered to. Members must provide relevant and effective training to make sure their staff understands the Codes’ provisions and their own legal obligations to consumers and responsibilities under the Code.
- Members must ensure that all staff are fully trained and equipped to deal with the needs of particularly vulnerable consumers (see section 9 below)

7. Marketing, Advertising and Publicity

Members must ensure that their advertising or promotional material, whether by newspaper, TV, Radio, website or any other media form:

- Is clear, accurate and truthful, and does not in any way mislead either expressly, or by implication or omission.
- Complies with all regulations and guidelines in force from time to time
- Contains reference to their membership of DEMSA and their adherence to the DEMSA Code of Conduct, by use of the DEMSA logo.
- All literature must give details of how consumers may obtain a copy of the Code.

8. Information to be provided to Consumers

Members must provide clients with sufficient, clearly written information to enable them to make an informed decision about whether or not they would benefit from the services the DMC's offer.

In particular the following must be covered:

- It must be made clear that administration and/or management fees will be payable and details of such costs must be provided.
- If a first payment goes to the DMC and not to the creditors, consumers must be warned that they will go further into arrears with their creditors.
- The consumer must be advised that he will be given the opportunity to withdraw from the contract, the procedures for withdrawal from a debt management programme, and the circumstances in which costs will and will not be incurred and, if they are, what they are likely to be.
- The nature of the service to be provided by the Member: the total cost to the consumer of the service including any initial or fixed charge fee or deposit, the periodic management fee to be paid to the member multiplied by the estimated length of the contract; the amount to be repaid; and the likely duration of the contract. Where it is not possible to establish the cost or duration of a contract a best estimate of the total cost to the consumer of the service must be given. Estimates must be realistic and must be accompanied by a clear warning that it is an estimate and the assumptions it is based on.
- If the proposal is covered by the Financial Services (Distance Marketing) Regulations 2004 then the relevant information prescribed by that act, including cancellation rights must be advised to the consumer.
- Creditors are not obliged to accept reduced payments or to freeze interest and/or charges and fees and that, unless they do so, repaying

the same debt over a longer period of time will increase the total amount to be repaid.

- Collection actions, including default notices and litigation, can ensue and that there is no guarantee that any existing or threatened proceedings will be suspended or withdrawn.
- The likely impact of the debt management programme on the consumer's credit rating, that they might not be able to obtain credit in the short term, and that there is some likelihood that they will not be able to do so in the medium to long term.
- The importance of prioritising debts such as mortgage, rent, council tax and utility payments and any arrears, and ensuring that an appropriate allowance is made for these payments within any debt management programme.
- The nature of those commitments that will, and those that will not be included within the repayment plan must be made clear to potential clients.
- The likelihood that existing bankers may not wish to continue banking facilities and information and advice on basic bank accounts.
- The terms and conditions of any managed or other bank account or other service offered
- Where a member of staff from a Debt Management Company recommends that, in the consumer's best interests, one of their options is a remortgage, or further advance, or consolidation loan, the DMC must disclose to the customer in writing the level of fee, commission or any other remuneration they will receive from the third party who arranges this service, if not already disclosed by the third party. Any such advice will be given with the requisite degree of care and if it is in the consumer's best interests (notwithstanding that the consumer does not take up a debt management programme with the member and does not therefore become a client).

9. Vulnerable Consumers (see also under "Clients' Interests)

DEMSA members must offer equality of service to any person, regardless of their race, creed, sex, disability or nationality.

Members must have in place satisfactory provisions for dealing with vulnerable consumers who may include those who are disabled and/or disadvantaged in some way, for instance consumers with poor literacy skills, including difficulty with reading/writing or understanding basic mathematics, or lack of knowledge about a complex product or service, or whose first language may not be English.

10. Contract Terms

Contract terms and conditions should be fair, written in plain, intelligible language and easily legible, and must provide for the following:-

- Detail the nature of services being provided, ie the debts which are included, and those that will not be included in the programme.
- Where it is not possible to state firmly the cost or duration of a contract a best estimate of the total cost *and duration* of the service, based on the amount of payment being made, the management fees charged and the amount of debt outstanding. The assumptions on which this is based should be set out.
- Contract terms must specify a period within which payments received from clients will normally be passed on. As specified under “Client Account” below payments must be made within 5 working days of clearance.
- Procedures for withdrawal from a programme.
- Compliance with the Financial Services (Distance Marketing) Regulations 2004 regulations 9 & 10 regarding the cancellation rights enjoyed by consumers, which include the right to cancel, in certain circumstances, even if written information has been received by the consumer..
- Any contract must not include any term which says or implies that there are no circumstances in which a client is entitled to a refund. For example a refund may be due to a dissatisfied client if:
 1. The member has promised more than it can deliver.
 2. The member has failed to conduct negotiations with the reasonable care and skill required by section 13 of the Supply of Goods and Services Act; or
 3. There has been a total failure of consideration.
- Clients on debt management programmes must not be prohibited from corresponding with, or responding to creditors or their agents. It is reasonable for members to request that all contact/correspondence with creditors be copied to them. Members must deal with all correspondence promptly, and must keep the client informed of relevant communications.
- The contract should allow the client to withdraw from the contract where, following signing of the contract the total fee differs significantly from the estimate given prior to the contract (for example, because a full investigation of the client’s circumstances reveal that the monthly payment must be larger than first thought).

11. Client Accounts

- Members must maintain accurate, up to date client records that detail all client payments and written and oral contact with clients and their creditors.
- Clients' monies must not be accepted, whether post-dated or otherwise, before clients have received and acknowledged in writing the written terms of business.
- Members must demonstrate, by annual audit certificates from a chartered accountant, that client monies are held in a separate "ring fenced" bank account that would not be at risk in the event of a member ceasing to trade, and is not usable by the member for the purposes of its own business. Any interest earned on the account should accrue to the benefit of the client, not the company.
- Members must pay clients' monies to creditors within five working days of clearance.
- If clients withdraw from debt management programmes, members must refund any monies held for disbursement paid by the clients, excluding any reasonable administration fees, where these have not yet been distributed.

12. Debt Management Services

- Members must advise clients of the outcome of negotiations with creditors. This is not limited to the situation when creditors have refused to deal with members, or have returned payments, or have refused to freeze interest.
- Members must keep clients informed of any developments in the relationship with creditors, in particular the issue of default notices or the threat of issue of legal proceedings.
- Where the service provided by the member includes debt repayment the member must:
 - Take full account of debts such as mortgage payments, rent, utility payments etc including any arrears already incurred on those debts, in setting monthly repayments, and
 - Reassess the payment plan and consider any necessary changes (including bringing the plan to an end) to ensure it remains in the client's best interests, as soon as it becomes aware of material change in the client's financial position. The client should be advised of any recommended changes without delay. Repayment plans should in any event be re-assessed on at least an annual basis and the client informed of the outcome of the reassessment.
 - Clients should at the outset be given a statement of how their money is being disbursed. In addition, where a plan has been agreed, the balance owed (or if an accurate figure is not known,

the best estimate), the period of payment needed to clear the debts and the fee charged by the member must be included in the statement. Clients must be kept informed of any material changes to these arrangements at the time they occur. Members should meet any request by a client for a statement of his or her position.

- Members should respond to complaints promptly and fairly.(See under “Redress”).

13. Client Interests

- Members must demonstrate that they act solely in their clients’ best interests. In doing so they must help clients to clear their debts as quickly and efficiently as possible, and must not use high pressure selling tactics.
- Members must exercise all due discretion, in the best interests of the debtor, in deciding whether or not to accept a debtor on to a debt management programme, and must bear in mind that debt management programmes are not suitable for all debtors
- A realistic assessment of the financial circumstances of the consumer must be made before advice is given. Verification of information given should be obtained in the form of pay slips etc.
- Members must keep in strict confidence information given to them by their clients, excepting the disclosure of relevant information with express consent of the client, to the relevant creditors (or exceptionally for the purpose of the independent investigation of a complaint)
- Members must advise clients on the importance of paying secured loans and prioritising debts.
- Any advice given to the client to cancel direct debits and standing orders prior to a repayment plan being agreed with creditors must be demonstrably in the best interests of the client. Members must clearly warn clients of the risks and consequences of this course of action if they advise it.
- Members must not lend money to clients for the purpose of debt consolidation. However DEMSA members may accept referrals from lenders or credit brokers, provided these are done with the informed prior consent of the consumer.
- Members must ensure that proper records are kept for all cases and that adequate electronic means of storage, capable of retrieval are in place. Upon completion or termination of a programme, members will provide the client with a full statement of the history of the programme and return any important documentation eg forms P60 etc. Any documentation, paper or electronic, should be retained for an appropriate period in accordance with Data Protection Guidelines.

- Members who provide other services or products such as Payment Protection Insurance must ensure that clients “opt in” to the purchase of such products.

14. Lenders

- Members must provide lenders with clear information about their terms of business and methods of operation, as requested.
- Members must take all steps necessary and appropriate in order to provide lenders with accurate details about their clients’ income and expenditure in order to allow the creditor to make an informed judgement about proposals for repayment. If requested verification of information must be provided.
- Members must provide lenders with clear payment proposals, endeavouring to ensure pro rata distribution of funds to all creditors, excepting very small payments.
- If a client withdraws formally, in writing, from a repayment programme, members must inform the relevant lenders, in writing, within seven working days of receipt of such written notice.

15. Redress

- Clients and lenders must be advised of the Code and their right to make a complaint to DEMSA if they are dissatisfied with the service they receive.
- Members must inform clients that they have a written internal complaints procedure which:-
 1. is accessible and user friendly, and readily available to all their clients and to anyone wishing to make a complaint
 2. must detail the steps the members will take to investigate complaints
 3. must advise the complainant who will be responsible for investigating complaints
 4. ensures a response which is fair and prompt (within ten working days)
 5. records and keeps details of customers’ complaints and of the action taken in response
- Where applicable members must be prepared to cooperate with local consumer advisers, or any other intermediary consulted or engaged by the client in the event of any dispute.
- Members must inform all clients of their membership of DEMSA and of the existence of the Code of Conduct and DEMSA Complaints Procedure, to enable them to be aware of their rights and remedies if they believe the code has been breached.

- Members must not deny or impede a complainants right to invoke DEMSA's complaints and discipline procedures, or his access to the Office of Fair trading or to the Financial Ombudsman Service
- In addition to complaints lodged by clients and/or lenders, any action committed by a member which may be construed as bringing DEMSA into disrepute will be considered as a disciplinary matter and dealt with in accordance with the DEMSA Disciplinary Procedures.

16. Failure of a Debt Management Company

Members will, if asked by creditors and/or clients and/or DEMSA, assist the clients of a failed debt management company by arranging an acceptable programme, and will administer future disbursements without any up front fee being charged.

17. Extreme Hardship Cases

Where it appears that applicants are unable to pay any management fees due to the severity of their financial position, members should, where appropriate recommend such clients to non profit advice centres.

18. Administration and Monitoring of the Code

The DEMSA Code of Conduct is supervised and administered by the Code Administrator who is the General Secretary of DEMSA, appointed by the Board.

The Code Administrator shall:

- Satisfy himself that members' trading practices and documentation comply with the Code.
- Investigate any complaint and/or disciplinary matter, whether Code-related or not, and take such consequential steps as are required under the terms of this Code in accordance with the provisions of this Code.
- Investigate, and if necessary, report to the Board any failure by a member to act upon any recommendation made by him to the member in consequence of a complaint.
- Report any failure by a member to act upon any recommendation to the Board
- Review the content of the Code on an annual basis in the light of reaction to the Code and changing circumstances due to statutory and practical considerations
- Provide an Annual Report on the operation of the Code and Procedures and ensure that this is circulated to interested parties including the OFT.

19. Individual Voluntary Arrangements (IVA's)

It has become increasingly common for debt managers, giving best advice to consumers, to offer IVA's, and this Annex is intended to broaden the Code to address this.

The DEMSA Code of Conduct in this instance seeks to address issues which arise prior to formal contract and approval of IVA's by the Court and aims to encourage the highest standards in the industry and to provide a high level of protection to the consumer.

An IVA is a formal scheme whereby debtors propose a full or partial repayment of their debts to Creditors, generally through an authorized Insolvency Practitioner. Creditors vote on whether to accept the proposal and, assuming the required majority is achieved, the scheme is binding. The scheme is approved by the Court, who appoint a Supervisor to administer the arrangement, in accordance with Insolvency Act 1986.

This Annex should be read in conjunction with the Code but where the requirements of the Code do not apply to the operation of IVA's, as governed by the Insolvency Act 1986, may in that instance be disregarded. The clauses of the Code, however, which must at all times be observed by members when setting up an IVA are:-

6, 9, 13 (paragraphs 1,3,4,5,6,7), 15 (where applicable and not governed under the Insolvency Act 1986).

To be read in conjunction with Clause 7 of the Code

When advertising; marketing and giving pre-contractual advice on IVA's DEMSA members must never

- Use statements such as "free of charge"; "at no cost to you because your creditors cover the costs" because they imply all money paid by the consumer goes towards paying off their debt, whereas a proportion of the initial payments (sometimes up to the first two years payments) is paid towards the practitioner's fees.
- Claim consumers will be debt free in five years, without explaining that although they become debt free, the effect on their credit rating will last for six years.
- Use statements such as "up to 90% of your debt may be written off" when in reality the figure is nearer 60 – 70%.
- Claim they can guarantee a favourable outcome to negotiations with creditors, or that "creditors are happy to help" where in the case of an IVA, at least 75% of creditors by value need to accept the proposal for the arrangement to be accepted.

If listing benefits of an IVA's other than stating its purpose for debt reduction, DEMSA members must not:

- Imply that fees are paid by the creditor or that the consumer does not pay any fees.
- Fail to point out that the consumer's credit rating will be affected for six years and not just for the period of the IVA, which is generally 5 years;
- Fail to inform a home owner seeking an IVA that they may be required to re – mortgage their property during the term or obtain a remortgage to realise the equity to pay off some or all of their debt.

When providing pre-contractual advice and information the consumer must always be given advice that is in their best interests and should include:

- A clear explanation of all available options open to them, such as bankruptcy, debt management plans.
- Awareness of the requirements and procedures involved in an IVA proposal.
- A clear explanation about the fee payable to the nominee and supervisor of the IVA out of any repayments made.
- Awareness of the implications of entering an IVA, namely:
 - if they are a homeowner with sufficient equity they may be required to remortgage their home to release the equity to repay some or all of the remaining debt
 - if the IVA failed, this could lead to bankruptcy.
 - their credit rating would be affected for six years.
 - that the decision to accept an IVA proposal is entirely in the hands of creditors.

In addition to Clause 5 of the Code regarding compliance with the OFT Debt Management Guidance, DEMSA members providing advice and assistance with IVAs should abide by and keep up to date with all industry standards, guidelines and protocols.

20. Complaints and Discipline Procedures

- a) The aim of these procedures is to ensure that any complaint of misconduct by a member is investigated fairly, efficiently and promptly. It is designed to ensure that, where necessary, appropriate steps are taken, whether of an executive or disciplinary nature afford proper redress to the complainant.
- b) If a borrower or creditor wishes to make a complaint about a member, they should in the first instance address their complaint directly to the member concerned. All members of DEMSA must have a written procedure that is readily available to all their clients and to anyone wishing to make a complaint. Members are reminded of their strict obligations as Consumer Credit Licensees to fulfil the criteria governing their internal complaints procedures as set out by the Financial Ombudsman Service under the Consumer Credit Rules.
- c) Members of DEMSA are obliged to inform all clients of their membership of DEMSA and the existence of the DEMSA Code of Conduct prior to arranging a payment programme.
- d) In the event that the complainant is not satisfied with the member's response they should then inform DEMSA. Whilst DEMSA will be happy to discuss general matters on the telephone with consumers any complaint must be made in writing, either by post or electronically.
- e) DEMSA can only rule on complaints relating to breaches of the Code by a member. It will, however, wherever practical consider complaints of any nature relating to the conduct of a member, and will seek to assist in resolving the issues raised. Otherwise, it will direct the complainant to any available alternative vehicle for resolving the dispute.

21. Code Administrator

The Code Administrator is appointed by the Board of DEMSA and is responsible to them for the supervision and administration of the Code, including complaints and discipline procedures.

22. Complaints

- a) If the complaint is not initially made in writing, the Administrator will request a letter setting out the complaint.
- b) The Administrator will first determine whether the conduct in issue is Code-related. In the event that it is determined that it is not, this will be reported in writing to the complainant. The report will be sent to the complainant within 5 working days of receipt of the complaint.
- c) If the Administrator determines that the complaint is apparently Code-related, he will (and if not Code-related, may) contact the member

within 5 working days of receipt of the complaint. The member is required to respond in writing within 10 working days, setting out their case, and how (if appropriate) the issue will be addressed under their internal complaints procedures.

- d) On receipt of response from the member, the Administrator will determine whether or not in all the circumstances there is an actual Code-related breach.
- e) The Administrator will communicate this decision and the reasons for it to the parties in writing within 21 working days. He will advise the parties on any necessary consequential steps to be taken by them. This may include recommendations to the members as to future conduct.
- f) In the event that a Code-related breach is involved, the Administrator will cause the matter to be placed before the DEMSA Compliance & Discipline Panel (the Panel) and will advise the member in writing accordingly.
- g) Where the Administrator decides that the complaint does not disclose a breach of Code, then the complainant will be advised that he has a right to apply to appeal this decision to the Panel for review. Any such application must be made in writing within 7 working days of the Administrator's decision under this sub-paragraph, and will be determined by the Chairman of the Panel, who will decide whether or not the complaint should be treated as Code-related, and whether or not it should be considered as an appeal on its merits by the Panel.

23. DEMSA Duties and Responsibilities

It is a requirement of membership of DEMSA that members adhere to the DEMSA Code of Conduct in its entirety and DEMSA is charged by its members to:

- Establish the required standards and incorporate them into the DEMSA Code of Conduct
- Ensure that all members are fully aware of the requirements of the Code
- To regularly review and, where appropriate to modify and amend the Code
- To monitor, on a regular basis, adherence to the Code by members, by the means set out below
- To investigate any actual or potential breaches of the Code brought to its attention by any client of a member either by way of a formal complaint.
- To investigate any actual or potential breaches of the Code brought to its attention by any other means

- To provide, by an independent panel, a means for determining allegations of breaches of the Code, and to impose such penalties and to make such orders as the Code provides.
- To ensure that reasonable time limits are set, and met, for the correction of any non – compliance issues

24. Compliance & Discipline Panel

- a) A Compliance and Discipline Panel (the Panel) will be convened as and when appropriate to determine any appeal from a decision of the Code Administrator that alleged misconduct is not Code-related, or any complaint of a Code-related breach, and to make any consequential orders as are set out in this Code.
- b) The Panel will have a Chairman and no more than 4 other members (including the Code Administrator). All members of the Panel will be wholly independent of the debt management industry. Three members will constitute a quorum. In the event of the Chairman being unavailable, the Code Administrator will nominate another member to chair the proceedings.
- c) The Panel will hear and determine allegations of misconduct by a member of DEMSA arising from any of the following:
 1. A consumer complaint
 2. In consequence of a compliance audit. In this context, DEMSA will undertake whether by internal procedures or by the services of external professionals, regular reviews of members' compliance both with key principles of the Code, as well as the OFT Notes for Guidance.
 3. Information obtained from a mystery shopping exercise, or a consumer satisfaction survey.
 4. A complaint from another DEMSA member.
 5. A complaint from any other interested source, including (but not confined to) a lender.
- d) The Panel will normally accept and consider any written representations by the parties. Such representations must be received within no more than 7 working days of the date appointed for the meeting of the Panel. The Panel may permit personal representation by, or on behalf of a party. Request for a personal hearing must be submitted in writing, setting out the reason for the request, and will be decided by the Chairman.

- e) The decision of the Panel will be communicated to the member in writing within 5 working days and will contain a short summary of the reasons

25. Disciplinary Action

The Panel will take disciplinary action in one or any of the following events:

- a) Material breach of the Code
- b) Repeated breaches of the Code
- c) Failure by a member to respond to any complaint or other allegation of misconduct (such as audit-based issues) within a specified time.
- d) Failure by a member to address within a specified time by its own internal procedures a complaint by a consumer.
- e) Conduct by a member of whatever nature calculated to bring DEMSA into disrepute.

26. Sanctions

In the event of an established breach of Code, the Panel may invoke one or more of the following powers:

- a) A written warning
- b) A requirement that the member's documentation and/or procedures be amended within a specified period.
- c) A direction that the member be subject to an audit.
- d) A refund to the complainant of all or such part of fees already paid by the complainant to the member.
- e) Compensation to the complainant.
- f) A fine, not exceeding the sum of £50,000. The said fine, or such part as the Panel may determine, may be suspended.
- g) Suspension from membership, either for a specified period, or until the Panel is satisfied that the matter giving rise to suspension has been fully rectified.
- h) Expulsion from DEMSA
- i) An order that the proceedings and orders made be published in such a form as the Panel may direct.

27. Costs

- a) Costs reasonably and properly incurred in investigating and determining a complaint that is not referred to the Panel shall be born by the affected member.
- b) In the case of proceedings before the Panel, costs reasonably and properly incurred:
 1. Where a breach is substantiated, will be borne by the offending member.
 2. In any other case, will be in the discretion of the Panel.

28. Financial Ombudsman Service

All DEMSA members hold a valid Consumer Credit Licence and fall within the supervision of the Service. Accordingly, any consumer has the right to refer their complaint to the Service at any time, and whether or not they have sought redress under the provisions of this Code.