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INCREASED SCRUTINY OF THE DEBT SALE INDUSTRY

The intentions of external agencies for the debt sale market could have serious implications for the industry
By Ken Maynard

SINCE the establishment of the debt sale market in the UK eight years ago, sales of portfolios of distressed debt have grown to a point where all mainstream lenders now participate.

However, the industry's growth, and the resultant higher profile of purchased debt, has brought with it additional issues and challenges. These include increased scrutiny from external agencies such as the Financial Ombudsman Service (FOS) – which, from April 2007, will have jurisdiction over credit services under the Consumer Credit Act 2006 – as well as from consumer rights organisations such as Citizens

Advice.

At present the FOS's jurisdiction covers most businesses that are regulated by the FSA. However, under the Consumer Credit Act 2006, it is intended that its jurisdiction will extend to businesses within the credit industry that hold standard licences including consumer credit, debt collecting and debt administration.

An area of particular interest is the way in which complaints would be handled under the new regime, as the FOS may offer compensation to complainants, potentially encouraging a greater number of complaints. Given

that the FOS also levies a fee, expected to be around £450, against the business if a complaint is investigated, this has enormous implications for the cost of collecting debt, which in turn may impact the cost a purchaser will be prepared to pay for a portfolio of debt.

In addition, Citizens Advice is currently pursuing a series of court cases which challenge the right of debt purchasers to pursue a regulated debt through the courts. They argue that according to the definition of 'creditor' under section 189 of the Consumer Credit Act 1974, a purchaser must prove that he has acquired the duties as well as the rights to a consumer credit agreement before he can become the 'creditor' and therefore pursue the right to sue for the debt.

This goes against the general industry belief that section 139 of the Law of Property Act 1925 applies in the case of debt purchase, which only requires that written notice of the assignment is given to the debtor in order to complete a legal assignment of a debt, and again has serious implications for the industry.

While we welcome the developing professionalism and expertise in all sectors of the credit industry and wholly support the need for transparency within debt purchase, it is important to recognise that there will always be rogue customers looking for ways to delay or avoid payment of debt.

The growth in the use of web sites for disgruntled debtors to exchange information, often not accurate in its content, is an example of this.

There is a need for lenders and debt buyers to work together on all these challenging aspects and therefore this underlines the role that the Debt Buyers and Sellers Group has to play. **CCR**

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