

PERG 17.7 Examples

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Q7.1 Please give me some examples of what is and is not debt counselling

Please see the following table. All the examples assume that the advice or information relates to debts under a *credit agreement* or a *consumer hire agreement* or to a group of debts that include such debts.

Examples of what is and is not <i>debt counselling</i>	
Example	Explanation
(1) Adviser: "I recommend you enter into a debt management plan"	This is <i>debt counselling</i> . This is advice which steers the debtor in the direction of a debt solution which the debtor could enter into as a means of liquidating his debts.
(2) Adviser: "I recommend you do not enter into a debt management plan"	This is <i>debt counselling</i> . This is advice which steers the debtor away from a particular debt solution which the debtor could have entered into as a means of liquidating his debts.
(3) Adviser: "I suggest you change (or do not change) from a debt management plan to a debt arrangement scheme" A debt arrangement scheme refers to a debt payment programme under the Scottish debt arrangement scheme (DAS).	This is <i>debt counselling</i> . This is advice that steers the debtor in the direction of a different debt solution from the one that he has already entered into as an alternative means of liquidating his debts.
(4) Adviser: "I recommend you do not borrow more than you can comfortably afford"	This is not <i>debt counselling</i> as it is about incurring debts, not liquidating them.
(5) Adviser: "I would recommend that you explore the pros and cons of all the different debt solutions that may be available to you"	This is not <i>debt counselling</i> . It is unregulated generic advice because it does not steer the debtor to any particular course of action in liquidating his debts.
(6) Adviser: "I think that reaching an informal agreement with your creditors about repaying your debts may not be the best option available to you given your circumstances. I will set out the pros and cons of various other debt solutions that may be more appropriate to your circumstances ? but ultimately the option you choose will be a matter for you."	This is likely to be <i>debt counselling</i> . It does not recommend a precise course of action but, as described in the answer to Q5.1 (Broadly speaking, what is advice?), this does not necessarily matter. The adviser is making a value judgement and giving an opinion and is steering the debtor towards certain courses of action and away from others. In particular, the adviser has recommended that the debtor does not deal with his debts by way of an informal agreement.
(7) The adviser gives an explanation of the way that various types of debt solution work.	If this is given in a balanced and neutral way it is likely not to be <i>debt counselling</i> as it is just factual information.
(8) The adviser gives a comparison of the features and benefits of one type of debt solution with another and the implications of entering into the two different types of debt solutions.	Same as the answer to (7).

<p>(9) An adviser advises on uncertain questions about a debt management plan.</p>	<p>The element of uncertainty is likely to mean that the advice has a strong opinion and hence is likely to be advice, rather than mere information. <i>debt counselling</i> as long as it steers the debtor towards a course of action for his debts.</p> <p>If the advice is given by a lawyer it is likely to be excluded from <i>debt counselling</i> exclusion in article 39K of the <i>RAO</i> (Activities carried on by members of a profession etc.) referred to in the answer to Q6.1.</p>
<p>(10) A <i>person</i> distributes leaflets or illustrations that help debtors to decide how they will liquidate their debts</p>	<p>This is not <i>debt counselling</i> as it is advice given to the general public. See Q4.1 (Does debt counselling cover advice given to the public in general or a particular debtor?) for more about this.</p>
<p>(11) A <i>person</i> explains how to fill in a form for entering into an IVA</p>	<p>It is unlikely that a <i>person</i> would provide this advice on its own by way of business.</p> <p>If a <i>person</i> provides this help in the course of carrying on some other business activities he will not be <i>debt counselling</i> as it should be seen as providing advice.</p> <p>If though he provides this help in the course of a wider <i>debt counselling</i> activity, it will be included as part of that <i>debt counselling</i> activity.</p> <p>If the explanation is given by the insolvency practitioner the exclusion in the <i>RAO</i> (Insolvency practitioners) is likely to be available (see Q6.1 (What are available?)).</p>
<p>(12) A <i>person</i> uses direct marketing and other forms of advertising (for example, on websites promoted on search engines) and cold calling, to gather personal information from debtors, which is then sold on to providers of debt advice.</p>	<p>It is not <i>debt counselling</i> as it does not involve advice to debtors about debts due.</p> <p>However, a person providing such referrals will be <i>debt counselling</i> if, in the course of communicating with a debtor, he makes a recommendation to the debtor about how to liquidate his consumer credit debt.</p>
<p>(13) A <i>person</i> recommends that a debtor obtains advice from a particular <i>debt counselling firm</i>, ABC Debt Management.</p>	<p>Taken on its own it is not <i>debt counselling</i> because the adviser is advising the debtor to obtain advice from another adviser.</p> <p>However, if ABC Debt Management only offers one debt solution (e.g. a debt management plan), the referral could constitute a recommendation intended to steer the debtor in the direction of that particular debt solution and, therefore, it would be <i>debt counselling</i>.</p> <p>Consequently, whether or not <i>debt counselling</i> is involved will depend on the circumstances in each case and is likely to involve a consideration of the whole.</p>
<p>(13A) A <i>person</i> recommends that a debtor obtains advice from a particular insolvency practitioner or their <i>firm</i>.</p>	<p>Taken on its own it is not <i>debt counselling</i> because the adviser is advising the debtor to obtain advice from another adviser.</p> <p>However, where the insolvency practitioner or their <i>firm</i> only offers advice about a particular <i>debt solution</i> (e.g. an individual voluntary arrangement or a deed), the referral could constitute a recommendation intended to steer the debtor in the direction of that particular <i>debt solution</i> and, therefore, it would be <i>debt counselling</i>.</p> <p>Consequently, whether or not <i>debt counselling</i> is involved will depend on the circumstances in each case and is likely to involve a consideration of the whole.</p>
<p>(14) Adviser: "I recommend you prioritise the repayment of your electricity bill over all other debts"</p>	<p>This is likely to constitute <i>debt counselling</i> if, having considered all of the debtor's outstanding debts, an adviser advises the debtor to prioritise the repayment of one debt (e.g. an electricity bill) over his other outstanding debts (including debts</p>

	<p><i>credit agreements</i> or <i>consumer hire agreements</i>). This constitutes advice on the liquidation of debts due, since there is an implied recommendation that the debtor postpone repaying his consumer credit related debts until he has repaid his other debts.</p>
<p>(15) A <i>person</i> (for example, a money adviser) helps a debtor to draw up a budget, e.g. providing a budget planner to see how much disposable income the client has each month or how long the client's money could last over a particular period.</p>	<p>This is not <i>debt counselling</i> if all the adviser does is to provide a debtor with information about his budget and the process is limited to, and likely to be perceived as, assisting him to make his own choice as to a course of action he may take in liquidating his consumer credit-related debts.</p> <p>It may not be advice at all, in that it just puts into a convenient form information that the consumer has himself supplied.</p> <p>Even if it goes beyond just organising information supplied by the debtor, if the adviser gives the information in a balanced and neutral way, the adviser is providing information rather than advice. The adviser is supplying information that may be used for the purposes of deciding how to liquidate debts but not advice on liquidating them.</p>
<p>(16) An adviser gives budgetary advice</p>	<p>This is <i>debt counselling</i> if the adviser goes beyond the services in example 15 and advises the debtor on how to match income and debts. For example, the adviser may advise the debtor to reduce discretionary spending to a set amount each month to enable him to pay off a certain amount of a large credit card bill each month.</p> <p>It does not matter if the result of the advice is that the debtor should pay the debt in full, rather than by instalments over a period of time or by entering into a repayment plan, as <i>debt counselling</i> is not limited to advice about being able to pay the debt in full or rescheduling.</p>
<p>(17) Mortgage adviser: "I advise you to consolidate your unsecured consumer credit debts into this <i>regulated mortgage contract</i>"</p>	<p>This is unlikely to be <i>debt counselling</i>.</p> <p>Leaving aside the exclusions, this would be <i>debt counselling</i> as the adviser is proposing that the debtor should consolidate a number of his consumer credit debts into a single (potentially more manageable) debt with a view to the debtor being able to liquidate all of his debts.</p> <p>However, the exclusion in article 39J of the <i>RAO</i> (Activities carried on in connection with a <i>regulated mortgage contract</i> or a <i>home purchase plan</i>) is likely to apply. In this example, the exclusion works like this:</p> <p>(a) The advice must relate to a <i>regulated mortgage contract</i>.</p> <p>This condition is satisfied.</p> <p>Example (18) illustrates the issues that would arise if the adviser did not give specific <i>regulated mortgage contracts</i>.</p> <p>(b) Giving the advice must be a <i>regulated activity</i>. If the only <i>regulated activity</i> giving the advice is <i>debt adjusting</i>, that is not enough. Other <i>regulated activities</i> may apply too. However, the exclusion can still apply if the advice involves, in addition to another <i>regulated activity</i>.</p> <p>This condition is met because the adviser is <i>advising on regulated mortgage contracts</i>.</p> <p>Note: Technically this condition (giving the advice must be a <i>regulated activity</i>) will only be satisfied if the only <i>regulated activity</i> carried on by the adviser is <i>debt collecting</i> or <i>debt administration</i>. However, this example only mentions <i>debt adjusting</i>. If any of these three <i>regulated activities</i> apply, it is likely only to be <i>debt adjusting</i>.</p> <p>(c) When the mortgage lender enters into the mortgage it will be carrying on a <i>regulated activity</i> of <i>entering into a regulated mortgage contract</i>.</p>

PERG 4.7 explains when *entering into a regulated mortgage contract*

(18) Mortgage adviser: "I advise you to consolidate your unsecured consumer credit debts into a single *regulated mortgage contract*. However, I can't advise you what mortgage contract you should enter into or which mortgage lender you should use."

This is *debt counselling*. The exclusion in article 39J of the *RAO* (Activity relation to a *regulated mortgage contract* or a *home purchase plan*) do

The difference between this example and example (17) is that the advice does not relate to a particular *regulated mortgage contract* (or several *regulated mortgage contracts*). As explained in more detail in *PERG 4.6.5 G* this adviser is not *advising on regulated mortgage contracts*. The exclusion does not apply because the adviser is not carrying on another *regulated* means that one of the conditions for article 39J to apply is not met.

See example (17) for an explanation of the conditions that must be satisfied for the 39J exclusion to apply.

(19) A *person* operating a peer-to-peer lending platform advises a debtor on the liquidation of a debt due under a consumer credit agreement entered into with a lender or lenders (via the platform). In this example, the platform operator is carrying on the *regulated activity of operating an electronic system in relation to lending*.

This is *debt counselling* as long as the loan agreement is a *credit agreement*

The *regulated activity of operating an electronic system in relation to lending* covers agreements that are called article 36H agreements, which covers more *agreements*. If the consumer credit agreement is an article 36H *credit agreement* the advice will not be *debt counselling*.