

Consumer Credit sourcebook

Consumer Credit sourcebook

CONC 1	Application and purpose and guidance on financial difficulties
1.1	Application and purpose
1.2	Who? What? Where?
1.3	Guidance on financial difficulties
CONC 2	Conduct of business standards: general
2.1	Application
2.2	General principles for credit-related regulated activities
2.3	Conduct of business: lenders and restrictions on provision of credit card cheques
2.4	Credit references: conduct of business: lenders and owners
2.5	Conduct of business: credit broking
2.5A	Conduct of business: high-cost short-term credit (HCSTC) products on price comparison websites
2.6	Conduct of business: debt counselling, debt adjusting and providing credit information services
2.7	Distance marketing
2.8	E-commerce
2.9	Prohibition of unsolicited credit tokens
2.10	Mental capacity guidance
2.11	Remuneration and performance management policies, procedures and practices
2 Annex 1	Distance marketing information
2 Annex 2	Abbreviated distance marketing information
CONC 3	Financial promotions and communications with customers
3.1	Application
3.2	Financial promotion general guidance
3.3	The clear fair and not misleading rule and general requirements
3.4	Risk warning for high-cost short-term credit
3.5	Financial promotions about credit agreements not secured on land
3.6	Financial promotions about credit agreements secured on land
3.7	Financial promotions and communications: credit brokers
3.7A	Financial promotions and communications: P2P agreements
3.8	Financial promotions and communications: lenders
3.9	Financial promotions and communications: debt counsellors and debt adjusters
3.10	Financial promotions not in writing
3.11	Not approving certain financial promotions

CONC 4	Pre-contractual requirements
4.1	Content of quotations
4.2	Pre-contract disclosure and adequate explanations
4.3	Pre-contractual requirements and adequate explanations: P2P agreements
4.4	Pre-contractual requirements: credit brokers
4.5	Commissions
4.6	Pre-contract disclosure: continuous payment authorities
4.7	Information to be provided in relation to current account agreements
4.8	Pre-contract: unfair business practices: consumer credit lending
CONC 5	Responsible lending
5.1	Application [deleted]
5.2	Creditworthiness assessment: before agreement [deleted]
5.2A	Creditworthiness assessment
5.3	Conduct of business in relation to creditworthiness and affordability [deleted]
5.4	Conduct of business: credit brokers
5.5	Creditworthiness assessment: P2P agreements [deleted]
5.5A	Creditworthiness assessment: P2P agreements
CONC 5A	Cost cap for high-cost short-term credit
5A.1	Application, purpose and guidance
5A.2	Prohibition from entering into agreements for high-cost short-term credit
5A.3	Prohibition from imposing charges under agreements for high-cost short-term credit
5A.4	Cost cap for operating an electronic system in relation to lending
5A.5	Consequences of contravention of the cost caps
5A.6	Interpretation
CONC 5B	Cost cap for rent-to-own agreements
5B.1	Application and guidance
5B.2	Prohibition on RTO firms from entering into RTO agreements
5B.3	Anti-avoidance
5B.4	Policies and procedures for establishing benchmarked prices
5B.5	Record keeping
5B.6	Consequences of contravention of the total cost of credit cap
5B.7	Interpretation
CONC 5C	Overdraft pricing
5C.1	Application and purpose
5C.2	Charges for overdrafts to be interest rates
5C.3	Interest rates for unarranged overdrafts to be no more than the interest rates for arranged overdrafts

- 5C.4 Impact of changes to charging structures
- 5C.5 Interpretation

CONC 5D Overdraft repeat use

- 5D.1 Purpose and application
- 5D.2 Obligation to identify and monitor repeat use of overdrafts
- 5D.3 Interventions to be taken in the case of repeat users
- 5D.4 Monitoring repeat use strategies
- 5D.5 Reporting on repeat use of overdrafts

CONC 6 Post contractual requirements

- 6.1 Application
- 6.2 Assessment of creditworthiness: during agreement [deleted]
- 6.3 Information to be provided on a current account agreement and on significant overdrawn
- 6.4 Appropriation of payments
- 6.5 Assignment of rights
- 6.6 Pawn broking: conduct of business
- 6.7 Post contract: business practices
- 6.8 Post contract business practices: credit brokers

CONC 7 Arrears, default and recovery (including repossessions)

- 7.1 Application
- 7.2 Clear, effective and appropriate policies and procedures in respect of customers in or approaching arrears or in default
- 7.3 Treatment of customers in or approaching arrears or in default (including repossessions): lenders, owners and debt collectors
- 7.4 Information on status of debts
- 7.5 Pursuing and recovering repayments
- 7.6 Exercise of continuous payment authority
- 7.7 Application of interest and charges
- 7.8 Jurisdictional requirements
- 7.9 Contact with customers
- 7.10 Treatment of customers with mental capacity limitations
- 7.11 Disclosures relating to “authority” or “status”
- 7.12 Lenders’ responsibilities in relation to debt
- 7.13 Data accuracy and outsourced activities
- 7.14 Settlements, disputed and deadlocked debt
- 7.15 Statute barred debts
- 7.16 Passing data to lead generators etc.
- 7.17 Notice of sums in arrears under P2P agreements for fixed-sum credit
- 7.18 Notice of sums in arrears under P2P agreements for running-account credit
- 7.19 Notice of default sums under P2P agreements

CONC 8	Debt advice
8.1	Application
8.2	Conduct standards: debt advice
8.3	Pre contract information and advice requirements
8.4	Debt solution contracts
8.5	Financial statements and debt repayment offers
8.6	Changes to contractual payments
8.7	Charging for debt counselling, debt advice and related services
8.8	Debt management plans
8.9	Lead generators: including firm responsibility in dealing with lead generators
8.10	Conduct of business: providing credit information services
CONC 10	Prudential rules for debt management firms
10.1	Application and purpose
10.2	Prudential resources requirements
10.3	Calculation of prudential resources
CONC 11	Cancellation
11.1	The right to cancel
11.2	Right of withdrawal: P2P agreements
CONC 12	Requirements for firms with interim permission for credit-related regulated activities
12.1	Application and purpose
CONC 13	Guidance on the duty to give information under sections 77, 78 and 79 of the Consumer Credit Act 1974
13.1	Application
CONC 14	Requirement in relation to agents
14.1	Application
CONC 15	Agreements secured on land
15.1	Application

CONC App 1	Total charge for credit rules; and certain exemptions
App 1.1	Total charge for credit rules for certain agreements secured on land
App 1.2	Total charge for credit rules for other agreements
App 1.3	Exemption of certain credit agreements secured on land
App 1.4	Exemption for high net worth borrowers and hirers and exemption relating to businesses

Transitional provisions and Schedules

TP 5	Transitional provisions for prudential provisions in relation to debt management firms
TP 6	Transitional provisions for financial promotions and communications in relation to catalogues etc.
TP 7	Transitional provision in relation to the Consumer Credit (Amendment No 2) Instrument 2015
TP 7A	Transitional provisions in relation to the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018
TP 7B	Transitional provisions in relation to the Consumer Credit (High-Cost Credit) Instrument 2018
TP 8	Other transitional provisions
Sch 1	Record keeping requirements
Sch 2	Notification and reporting requirements (if any)
Sch 3	Fees and other required payment
Sch 4	Not used
Sch 5	Rights of action for damages
Sch 6	Rules that can be waived

Chapter 1

Application and purpose and guidance on financial difficulties

1.1 Application and purpose

Application

1.1.1

G

- (1) The Consumer Credit sourcebook (CONC) is the specialist sourcebook for *credit-related regulated activities*.
- (2) CONC applies as described in this chapter, unless the application of a chapter, section or a *rule* is described differently in the chapters, sections or *rules* in CONC.

Purpose

1.1.2

G

The purpose of CONC is to set out the detailed obligations that are specific to *credit-related regulated activities* and activities connected to those activities carried on by *firms*. These build on and add to the high-level obligations, for example, in PRIN, GEN and SYSC, and the requirements in or under the CCA.

1.1.3

G

Firms are reminded that other parts of the FCA Handbook and PRA Handbook also apply to *credit-related regulated activities*. For example, the arrangements for supervising *firms*, including applicable reporting obligations, are described in the Supervision manual (SUP) and the detailed requirements for handling complaints are set out in the Dispute Resolution: Complaints sourcebook (DISP). The Client Assets sourcebook (CASS) also contains *rules* about client money that apply in certain circumstances.

The Principles for Businesses: a reminder

1.1.4

G

The Principles for Businesses (PRIN) apply as a whole to *firms* with respect to *credit-related regulated activities* and *ancillary activities* in relation to *credit-related regulated activities* (see ■ PRIN 3). In carrying on their activities, *firms* should pay particular attention to their obligations under:

- (1) *Principle 1* (a *firm* must conduct its business with integrity);
- (2) *Principle 2* (a *firm* must conduct its business with due skill, care and diligence);
- (3) *Principle 3* (a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems);
- (4) *Principle 6* (a *firm* must pay due regard to the interests of its *customers* and treat them fairly);

- (5) *Principle 7* (a *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading);
- (6) *Principle 9* (a *firm* must take reasonable care to ensure the suitability of its advice and discretionary decisions for any *customer* who is entitled to rely upon its judgment);
- (7) *Principle 10* (a *firm* must arrange adequate protection for clients' assets when it is responsible for them);
- (8) *Principle 11* (a *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *appropriate regulator* appropriately anything relating to the *firm* of which that regulator would reasonably expect notice); and
- (9) *Principle 12* (a *firm* must act to deliver good outcomes for *retail customers*), including ■ PRIN 2A.

1.2 Who? What? Where?

1.2.1 **R** Subject to ■ CONC 1.2.8R and ■ MCOB 14.1.5R, *CONC* applies to a *firm* with respect to carrying on *credit-related regulated activities* and connected activities, unless otherwise stated in, or in relation to, a *rule*.

1.2.2 **R** A *firm* must:

- (1) ensure that its employees and agents comply with *CONC*; and
- (2) take reasonable steps to ensure that other *persons* acting on its behalf comply with *CONC*.

Guidance on appointed representatives

1.2.3 **G**

- (1) Although *CONC* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the Act). In determining whether a *firm* has complied with any provision of *CONC*, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the Act).
- (2) *Firms* should refer to ■ SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives*.

1.2.4 **G** The *credit-related regulated activities* comprise *consumer credit lending, credit broking, debt counselling, debt adjusting, debt administration, debt collecting, providing credit information services, providing credit references, operating an electronic system in relation to lending* (but, other than in *FEES* and *SUP*, only insofar as it relates to a borrower or prospective borrower under a *P2P agreement*) and *consumer hiring*.

Where?

1.2.5 **R** *CONC*, except in relation to ■ CONC 3, applies with respect to activities carried on by a *firm*:

- (1) with a *customer* whose habitual residence is in the *UK* from an *establishment* maintained by the *firm* (or its *appointed representative*) in the *UK*; or

- (2) with a *customer* whose habitual residence is in the *UK* from an *establishment* of the *firm* (or its *appointed representative*) outside the *UK*.

1.2.6 **R** [deleted]

Agreements secured on land

- 1.2.7 **G**
- (1) *CONC* does not apply to *credit agreements* secured on *land*, with some limited exceptions as set out in (3) and (4), below.
 - (2) Agreements secured by a second or subsequent charge on the *customer's* home are, where regulated, governed by *MCOB* from 21 March 2016 (subject to transitional provisions allowing for the earlier adoption of *MCOB*). For detailed guidance on the regulation of secured lending, see **■ PERG 4**.
 - (3) The agreements secured on *land* to which *CONC* may apply include the following agreements (unless the agreement in question, or activity in relation to it, is otherwise exempt or excluded):
 - (a) an agreement under which the *borrower* is a relevant recipient of credit (within the meaning of article 60L of the *Regulated Activities Order*) but is not one or more individuals or trustees; for example, a partnership comprising two or three partners, one but not all of the partners in which is a body corporate; and
 - (b) an *MCD article 3(1)(b) credit agreement* secured on *land*, less than 40% of which is used as or in connection with a dwelling (whether by the *borrower* or anyone else) to the extent specified in **■ CONC 1.2.8R**.
 - (4) Broking in relation to the above *agreements* may be *credit broking* under article 36A of the *Regulated Activities Order*, whether the agreement is regulated or exempt. There are also some other secured *credit agreements* which are exempt, but the broking of which may still constitute *credit broking*, because some exemptions are disregarded by article 36A of the *Regulated Activities Order*. One example is a loan of more than £25,000 entered into wholly or predominantly for the purposes of a *borrower's* business and secured by a second or subsequent charge on the *borrower's* home: such a loan is not a *regulated mortgage contract* because it is a second charge business loan (as defined by article 61A of the *Regulated Activities Order*), and is an exempt agreement by virtue of article 60C(3) of the *Regulated Activities Order*; article 36A(4)(a) of the *Regulated Activities Order* disregards that exemption.

Application to MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries

1.2.8 **R** Subject to **■ CONC 1.2.10R**:

- (1) the following provisions of *CONC* apply to an *MCD article 3(1)(b) creditor* and to an *MCD article 3(1)(b) credit intermediary*:
 - (a) **■ CONC 1.2** and **■ CONC 1.3** (application and purpose and guidance on financial difficulties);

- (b) ■ CONC 2.2 (general principles for credit-related regulated activities);
 - (c) ■ CONC 2.7 (distance marketing);
 - (d) ■ CONC 2.8 (e-commerce); and
 - (e) ■ CONC 2.9 (prohibition of unsolicited credit tokens);
- (2) the following provisions of *CONC* additionally apply to an *MCD article 3(1)(b) creditor*:
- (a) ■ CONC 2.4 (credit references: conduct of business: lenders and owners);
 - (b) ■ CONC 2.10 (mental capacity guidance);
 - (c) ■ CONC 4.6 (pre-contract disclosure: continuous payment authorities);
 - (d) ■ CONC 6.4 (appropriation of payments);
 - (e) ■ CONC 6.5 (assignment of rights); and
 - (f) ■ CONC 6.7 (post contract: business practices); and
- (3) the following provisions of *CONC* additionally apply to an *MCD article 3(1)(b) credit intermediary* (unless it is also acting as an *MCD article 3(1)(b) creditor* and carrying out a direct sale of the proposed *article 3(1)(b) credit agreement*):
- (a) ■ CONC 2.5 (conduct of business: credit broking);
 - (b) ■ CONC 4.4.2R(4) (pre-contractual requirements: credit brokers);
 - (c) ■ CONC 5.4 (conduct of business: credit brokers), and the reference in that rule to *credit broking* includes a reference to *advising on regulated credit agreements for the acquisition of land*; and
 - (d) ■ CONC 6.8 (post contract business practices: credit brokers).

1.2.9

G

MCD article 3(1)(b) creditors and *MCD article 3(1)(b) credit intermediaries* are also subject to rules in *MCOB*, in accordance with ■ *MCOB* 14.1.3R to ■ *MCOB* 14.1.5R.

1.2.10

R

- (1) ■ CONC 1.2.8R and the rules applied by ■ CONC 1.2.8R do not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* where the conditions in paragraph (2) are met.
- (2) The conditions referred to in paragraph (1) are:
- (a) the agreement is either secured on land or for credit which exceeds £60,260;
 - (b) the agreement includes a declaration, made by the *borrower*, which provides that the *borrower* agrees to waive the protections and remedies applicable to *regulated credit agreements* except for those that transposed or implemented the *MCD* as it applied to the *United Kingdom* before *IP completion day*, and which complies with ■ CONC App 1.4;
 - (c) a statement has been made in relation to the income or assets of the *borrower* which complies with ■ CONC App 1.4; and

(d) a copy of the statement required by sub-paragraph (c) was provided to the *lender* before the agreement was entered into.

1.2.11

G

The regulatory status of *article 3(1)(b) credit agreements* entered into with high net worth individuals is dependent on several factors due to the different treatment of these agreements over time.

(1) An *article 3(1)(b) credit agreement* is exempt under article 60H of the *Regulated Activities Order*:

(a) if at the time it was entered into, the conditions set out in article 60H(1) were met; and

(b) if entered into on or after 21 March 2016 (whether before or after 21 July 2022), it was outside the scope of the *MCD* as implemented in the *United Kingdom* (such agreements are currently set out in section 423A(3) of the *Act* and article 60HA(2) of the *Regulated Activities Order*).

(2) Where an *article 3(1)(b) credit agreement* not falling within paragraph (1)(b) is entered into on or after 21 July 2022:

(a) if the *borrower* is *UK* resident or treated as present in the *United Kingdom* when the agreement is entered into (see ■ PERG 2.7.19J), the agreement is an exempt agreement where the conditions in article 60H(1) of the *Regulated Activities Order* are met.

(b) if the *borrower* is not *UK* resident or treated as present in the *United Kingdom* when the agreement is entered into, the agreement will not be an exempt agreement under article 60H. The *borrower* can, however, elect to waive the protections and remedies applicable to *regulated credit agreements* except for those that transposed or implemented the *MCD* as it applied to the *United Kingdom* before *IP completion day*. This will mean the agreement will not be subject to *CONC* but some *rules* in *MCOB* will still apply (see ■ CONC 1.2.9G).

(3) An *article 3(1)(b) credit agreement* not falling within paragraph (1) entered into on or after 21 March 2016 and before 21 July 2022 cannot be an exempt agreement under article 60H, but the *borrower* could elect to waive the protections and remedies applicable to *regulated credit agreements* except those that transposed or implemented the *MCD*. This will mean the agreement will not be subject to *CONC* but some *rules* in *MCOB* will still apply (see ■ CONC 1.2.9G).

(4) The ability of a *borrower* to waive the protections and remedies applicable to *regulated credit agreements* – except those that transposed or implemented the *MCD* – is set out in ■ CONC 1.2.10R (as it applied when the agreement was entered into).

Application where home financing agreements are facilitated by a P2P platform

1.2.12

R

CONC does not apply to a *P2P platform operator* in circumstances where *MCOB* applies by virtue of ■ MCOB 1.2.22R(1).

1.2.13

G

■ MCOB 1.2.22R(1) provides that a rule in *MCOB* that applies to a *mortgage lender*, a *home purchase plan provider*, a *reversion provider* or a *SRB agreement provider* also applies to a *P2P platform operator* facilitating a *regulated mortgage contract*, *home purchase plan*, *home reversion plan* or *regulated sale and rent back agreement* where the lender, plan provider, *reversion provider* or agreement provider does not require permission to enter into the transaction. It applies subject to the provisions in ■ MCOB 15.

1.3 Guidance on financial difficulties

1.3.1

- G** In *CONC* (unless otherwise stated in or in relation to a *rule*), the following matters, among others, of which a *firm* is aware or ought reasonably to be aware, may indicate that a *customer* is in financial difficulties:
- (1) consecutively failing to meet minimum *repayments* in relation to a credit card or store card;
 - (2) adverse accurate entries on a credit file, which are not in dispute;
 - (3) outstanding county court judgments for non-payment of debt;
 - (4) inability to meet *repayments* out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the *customer* having to borrow further to repay existing debts, or the *customer* only being able to meet *repayments* of debts by the disposal of assets or security;
 - (5) consecutively failing to meet *repayments* when due;
 - (6) agreement to a *debt management plan* or other *debt solution*;
 - (7) evidence of discussions with a *firm* (including a *not-for-profit debt advice body*) with a view to entering into a *debt management plan* or other *debt solution* or to seeking *debt counselling*.

Chapter 2

Conduct of business standards: general

2.1 Application

2.1.1

G This chapter applies as stated in the sections which follow.



2.2 General principles for credit-related regulated activities

2.2.1 **R** This section applies to a *firm* with respect to *credit-related regulated activities*.

General principles

2.2.2 **G** *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. Examples of behaviour by or on behalf of a *firm* which is likely to contravene *Principle 6* include:

- (1) targeting *customers* with *regulated credit agreements* which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason;
- (2) subjecting *customers* to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion;
- (3) not allowing *customers* who are unable to make payments a reasonable time and opportunity to meet *repayments*;
- (4) taking steps to repossess a *customer's* home, other than as a last resort.

[Note: paragraph 7.14 of *ILG*]

[Note: paragraphs 2.3 of *ILG*, 2.2 of *CBG* and 2.3 of *DMG*]

Duty not to use misleading names

2.2.3 **R** A *firm* must not carry on a *credit-related regulated activity* under a name which is likely to mislead *customers* about the status of the *firm* or the nature of its business, or in any other way.

[Note: section 25(1AD) of *CCA*]

2.2.4 **G**

- (1) In relation to **CONC 2.2.3 R**, an example of where a name may mislead is if the average *customer* of the *firm* is likely to be misled by the name of the *firm*.
- (2) Examples of the matters concerning a *firm's* status or the nature of its business about which its name may mislead *customers* include:
 - (a) the identity or nature of the *firm*;

- (b) its commercial or profit-seeking status;
- (c) its role, including any relationship with any other *person*;
- (d) the extent of its authority;
- (e) stating or implying that the *firm* is a public body or that it is related or connected in some way to a charitable, not-for-profit or governmental or local governmental organisation or to the courts;
- (f) the nature of the products or services supplied;
- (g) the cost of those products or services; and
- (h) the scale of the business including its geographical scope.

(3) A *firm* which operates under a variety of trading names should take particular care to ensure that *customers* are not misled as to the identity of the *firm*, or the nature or scale of the *firm's* business.

Effect on other rules and legislation

2.2.5

R

Any specific rule or piece of guidance in *CONC* is without prejudice to the application of *PRIN*, any other *rules* in the *Handbooks*, the *CCA* and secondary legislation made and things done under it, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Rights Act 2015, Part 8 of the Enterprise Act 2002 and any other applicable consumer protection legislation.

Restriction on marketing or providing an optional product for which a fee is payable

2.2.6

R

- (1) A *firm* must not enter into an agreement with a *customer* under which a charge is, or may become, payable for an optional additional product unless the *customer* has actively elected to obtain that specific product.
- (2) A *firm* must not impose a charge on a *customer* for an optional additional product under an agreement entered into on or after 1 April 2016 unless the *customer* actively elected to obtain that specific product before becoming bound to pay the charge.
- (3) A *firm* must not invite or induce a *customer* to obtain an optional additional product for which a charge will be, or may become, payable if the *firm* knows or has reasonable cause to suspect that:
 - (a) a contravention of (1) or (2) will take place with respect to the product; or
 - (b) the *person* supplying the optional additional product will act in a way that would contravene (1) or (2) if that *person* were a *firm*.
- (4) An omission by a *customer* is not to be regarded as an active election for the purposes of this *rule*.
- (5) It is immaterial for the purposes of (3) whether or not the *firm* would or might be a party to the agreement for the optional additional product.

- (6) A charge includes a financial consideration of any kind whether payable to the *firm* or any other *person*.
- (7) An optional additional product is a good, service or right of any description (whether or not financial in nature) that a *customer* may obtain (or not, as the case may be) at his or her election in connection with or alongside a service the provision of which constitutes the carrying on of a *credit-related regulated activity*.
- (8) (a) Where a *customer* is required to obtain a specific additional product, in order to receive the service the provision of which constitutes the carrying on of the *credit-related regulated activity*, the product is not an optional additional product.
(b) Where a *customer* is required to obtain a particular category of additional product (for example, a particular type of insurance), in order to receive the service the provision of which constitutes the carrying on of the *credit-related regulated activity*, and the *customer* is given a choice as to the seller or supplier from whom to obtain the product or which specific product to obtain, the product is an optional additional product.
- (9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the *firm* or another *person*.
- (10) A *borrower-lender agreement* enabling a *borrower* to overdraw on a current account, or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit, is not an optional additional product.
- (11) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the *customer* actively elected before entering into the initial agreement or a preceding renewal to obtain the product.
(b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).
(c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.
- (12) A *customer* may make an active election for the purposes of this rule through an intermediary in the sales process or through a *person* acting on behalf of the *firm*.

2.2.7

G

An example of an omission by a *customer* which is not to be regarded as an active election is the failure by the *customer* to change a default option such as a pre-ticked box on a website.

2.2.8

G

Firms are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.

2.2.9

G

Firms are reminded of the guidance on appointed representatives set out in ■ CONC 1.2.3G.

2.3 Conduct of business: lenders and restrictions on provision of credit card cheques

Application

2.3.1 **R** This section applies to a *firm* with respect to *consumer credit lending*.

General conduct

2.3.2 **R** A *firm* must explain the key features of a *regulated credit agreement* to enable the *customer* to make an informed choice as required by **CONC 4.2.5 R** (adequate explanations).

[Note: paragraph 2.2 of *ILG*]

2.3.3 **G** **CONC 6.7.2 R** requires a *firm* to monitor a *customer's* repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

2.3.4 **R** A *firm* must take reasonable steps to satisfy itself that any *credit brokers* with whom the *firm* deals are *authorised persons* or *appointed representatives*.

[Note: paragraph 1.27 of *CBG*]

Provision of credit card cheques

2.3.5 **R** (1) A *firm* may provide *credit card cheques* only to a *customer* who has asked for them.

[Note: section 51A(2) of *CCA*]

(2) A *firm* may provide *credit card cheques* only on a single occasion in respect of each request that is made.

[Note: section 51A(3) of *CCA*]

(3) The number of *credit card cheques* provided in respect of a request must not exceed three (or, if less, the number requested).

[Note: section 51A(4) of *CCA*]

(4) Where a single request is made for the provision of *credit card cheques* in connection with more than one *credit-token agreement*,

(2) and (3) apply as if a separate request had been made for each agreement.

[Note: section 51A(5) of CCA]

- (5) Where more than one request for the provision of *credit card cheques* is made in the same document or at the same time:
- (a) they may be provided in respect of only one of the requests, but
 - (b) if the requests relate to more than one *credit-token agreement*, in relation to each agreement they may be provided only in respect of one of the requests made in relation to that agreement.

[Note: section 51A(6) of CCA]

- (6) This rule does not apply to *credit card cheques* provided in connection with a *credit-token agreement* that is entered into by the *customer* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *customer*.

[Note: section 51B(1) of CCA]

- (7) If a *credit-token agreement* includes a declaration made by the *customer* to the effect that the agreement is entered into as mentioned in (6), the agreement is treated for the purposes of (6) as having been so entered into.

[Note: section 51B(2) of CCA]

- (8) The declaration in (7) must be in the form and content set out in ■ CONC App 1 for the exemption relating to business.
- (9) Paragraph (7) does not apply if, when the agreement is entered into
- (a) the *lender*; or
 - (b) any *person* who has acted on behalf of the *lender* in connection with the entering into of the agreement;

knows, or has reasonable cause to suspect, that the agreement is not entered into as mentioned in (6).

[Note: section 51B(3) of CCA]

- (10) Where an agreement has two or more *lenders*, references in (9) to the *lender* are to any one or more of them.

[Note: section 51B(5) of CCA]



2.4 Credit references: conduct of business: lenders and owners

Application

2.4.1

R

This section applies:

- (1) to a *firm* with respect to *consumer credit lending*; or
- (2) to a *firm* with respect to *consumer hiring*.

Disclosure of name and address of credit reference agencies consulted

2.4.2

R

- (1) Not later than the *lender* ("L") informs a *credit broker* that L is not willing to make a *regulated credit agreement*, L must, unless L informs the *customer* directly that L is not willing to make the agreement, inform the *credit broker* of the name and address (including an appropriate e-mail address) of any *credit reference agency* from which L has, during the negotiations relating to the proposed agreement, applied for information about the financial standing of the *customer*.

[Note: regulation 2 of SI 1977/330]

- (2) Not later than the *owner* ("O") informs a *credit broker* that O is not willing to make a *regulated consumer hire agreement*, O must, unless O informs the *customer* directly that O is not willing to make the agreement, inform the *credit broker* of the name and address (including an appropriate e-mail address) of any *credit reference agency* from which O has, during the negotiations relating to the proposed agreement, applied for information about the financial standing of the *customer*.

[Note: regulation 2 of SI 1977/330]

Searching credit files

2.4.3

G

A *firm* undertaking a credit reference search should not leave evidence of an application on a credit file where a *customer* is not yet ready to apply. Where practicable, *firms* should facilitate *customers* shopping around for *credit* by offering a 'quotation search' facility.

[Note: paragraph 3.13 (box 2) of ILG]

2.5 Conduct of business: credit broking

Conduct of business: credit broking

2.5.1 **R** This section applies to a *firm* with respect to *credit broking*.

2.5.2 **G** The scope of *credit broking* for the introducing activities (article 36A(a) to (c) of the *Regulated Activities Order*) covers *regulated credit agreements* and *regulated consumer hire agreements*. But additionally in relation to credit agreements it covers introductions concerning exempt agreements under articles 60C to 60H of that Order (other than agreements under article 60F of that Order (exempt agreements: exemptions relating to the number of repayments to be made)). Additionally in relation to *consumer hire agreements*, it covers exempt agreements articles 60O and 60Q of that Order.

Conduct of business

2.5.3 **R** A *firm* must:

- (1) where it has responsibility for doing so, explain the key features of a *regulated credit agreement* to enable the *customer* to make an informed choice as required by **CONC 4.2.5 R**;

[Note: paragraphs 4.27 to 4.30 of *CBG* and 2.2 of *ILG*]

- (2) take reasonable steps to satisfy itself that a product it wishes to recommend to a *customer* is not unsuitable for the *customer's* needs and circumstances;

[Note: paragraph 4.22 of *CBG*]

- (3) advise a *customer* to read, and allow the *customer* sufficient opportunity to consider, the terms and conditions of a *credit agreement* or *consumer hire agreement* before entering into it;

[Note: paragraph 3.9I of *CBG*]

- (4) before referring the *customer* to a third party which carries on *regulated activities* or to a claims management service (within the meaning of section 419A of the *Act*) or other services, obtain the *customer's* consent, after having explained why the *customer's* details are to be disclosed to that third party;

[Note: paragraph 3.9r of *CBG*]

- (5) before effecting an introduction of a *customer* to a *lender* or *owner* in relation to a *credit agreement* or *consumer hire agreement*, or before entering into such an agreement on behalf of the *lender* or *owner*, disclose (where applicable) the fact that the *lender* or *owner* is linked to the *firm* by being a member of the same *group* as the *firm*;

[Note: paragraph 3.9y of CBG]

- (6) bring to the attention of a *customer* how the *firm* uses the *customer's* personal data it collects, in a manner appropriate to the means of communication used;

[Note: paragraph 3.9q of CBG]

- (7) provide *customers* with a clear and simple method to cancel their consent for the processing of their personal data;

[Note: paragraph 3.9u of CBG]

- (8) at the request of a *customer*, disclose from where the *customer's* personal data was obtained;

[Note: paragraph 3.9w of CBG]

- (9) take reasonable steps not to pass a *customer's* personal data to a business which carries on a *credit-related regulated activity* for which the business has no *permission* .

[Note: paragraph 3.9x of CBG]

2.5.4

G

A *firm* may comply with ■ CONC 2.5.3R (6) by presenting to the *customer* a privacy notice. The Information Commissioner’s Office has prepared the Privacy Notices Code of Practice.

Conduct of business: credit references

2.5.5

R

Where a *credit broker* ("B") is a negotiator (within the meaning of section 56(1) of the CCA), B must, at the same time as B gives notice to a *customer*, under section 157(1) of the CCA (which relates to the duty to disclose on request the name and address of any *credit reference agency* consulted by B) also give the *customer* notice of the name and address of any *credit reference agency* of which B has been informed under ■ CONC 2.4.2 R.

[Note: regulation 3 of SI 1977/ 330]

2.5.6

R

Where a *credit broker* ("B") is not a negotiator (within the meaning of section 56(1) of the CCA), B must, within seven *working days* after receiving a request in writing for any such information, which is made by a *customer* within 28 days after the termination of any negotiations relating to a *regulated credit agreement* or a *regulated consumer hire agreement* whether on the making of the agreement or otherwise, give to the *customer* notice of:

- (1) the name and address of any *credit reference agency* from which B has during those negotiations applied for information about the financial standing of the *customer*; and

- (2) the name and address of any *credit reference agency* of which B has been informed under ■ CONC 2.4.2 R.

[Note: regulation 4 of SI 1977/ 330]

Searching credit files

2.5.7

G

A *firm* undertaking a credit reference search should not leave evidence of an application on a credit file where a *customer* is not yet ready to apply. Where practicable, *firms* should facilitate *customers* shopping around for *credit* by offering a 'quotation search' facility".

[Note: paragraph 3.13 (box 2) of ILG]

Unfair business practices: credit brokers

2.5.8

R

A *firm* must not:

- (1) make or cause to be made unsolicited calls to numbers entered on the register kept under regulation 25 or 26 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 or to a *customer* who has notified the *firm* not to call the number being used to call;

[Note: paragraph 3.9a of CBG]

- (2) other than where:

- (a) [deleted]
- (b) [deleted]
- (c) [deleted]

- (ca) (i) the *firm* has obtained the contact details of a *customer* (C) in the course of the sale or negotiations for the sale of a product or service to C;
- (ii) the direct marketing is in respect of the *firm's* similar products and services only; and
- (iii) C has been given a simple means of refusing (free of charge, except for the cost of the transmission of the refusal) the use of the contact details for the purposes of such direct marketing, at the time that the details were initially collected and, where C did not initially refuse the use of the details, at the time of each subsequent communication; or
- (d) the *firm* has previously explained that the following calls or *electronic communications* would be sent or made or caused to be sent or made by the *firm* and following that explanation C consented for the time being to such calls or communications;

send or cause to be sent an *electronic communication*, for the purposes of marketing, to C, or make or cause to be made by means of an automated calling system (which is capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system, and transmitting sounds which are not live speech for reception by persons at some or

all of the destinations so called) a call to C, for the purposes of marketing;

[Note paragraph 3.9b of CBG]

- (3) make or cause to be made by means of an automated calling system (see paragraph (2)) a call to a *customer*, for the purposes of marketing, after the *firm* has received a request from the *customer* to stop doing so;

[Note: paragraph 3.9c of CBG]

- (4) send, or cause to be sent, an *electronic communication* to a *customer*, for the purposes of marketing, after the *firm* has received a request from the *customer* to stop doing so;

[Note: paragraph 3.9c of CBG]

- (5) visit a *customer* at a time that is known to be, or reasonably likely to be, inconvenient or particularly undesirable to the *customer*;

[Note: paragraph 3.9f of CBG]

- (6) refuse to end a visit to a *customer* or to leave the *customer's* home, when requested to do so;

[Note: paragraph 3.9g of CBG]

- (7) unfairly request, suggest or direct a *customer* to make contact on a premium rate telephone number;

[Note: paragraph 3.9h of CBG]

- (8) conduct a telephone call with a *customer* who has called on a premium rate number for an unreasonable period;

[Note: paragraph 3.9i of CBG]

- (9) inappropriately offer a financial or other incentive or inducement to a *customer* to enter, immediately or quickly, into a *credit agreement* or *consumer hire agreement* to which this section applies;

[Note: paragraph 3.9j of CBG]

- (10) effect an introduction to a *lender* or an *owner* or to another *credit broker*, where the *firm* has considered whether the *customer* might meet the relevant lending or hiring criteria and it is or should be apparent to the *firm* that the *customer* does not meet those criteria;

[Note: paragraph 3.9aa and 4.41i of CBG]

- (11) suggest to a *customer* that an application for credit will be met in full when a lower amount may be offered;

[Note: paragraph 4.26d of CBG]

- (12) secure more *credit* for a *customer* than was requested where the object of doing so is for, or can reasonably be concluded as having

been for, the personal gain of the *firm* or of a *person* acting on its behalf, rather than in the best interests of the *customer*;

[Note: paragraph 4.26e of CBG]

- (12A) secure *credit* for a *customer* at a higher rate of interest than was requested, where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the *firm* or of a *person* acting on its behalf, rather than in the best interests of the *customer*;

[Note: paragraph 4.26e of CBG]

- (13) give preference to the *credit* products of a particular *lender* where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the *firm* or of a *person* acting on its behalf, rather than in the best interests of the *customer*;

[Note: paragraph 4.41k of CBG]

- (14) in relation to an insurance product or service (including, in particular, a payment protection product (the meaning of which is set out in ■ CONC 2.5.10 R)) or other product or service linked to the *credit agreement* or *consumer hire agreement* (whether the product or service is optional or required as a condition of the *credit agreement* or *consumer hire agreement*):

- (a) pressurise the *customer* to buy the product or service; or

[Note: paragraph 2.62, 2nd bullet of JGPP1]

- (b) offer undue incentives to the *customer* to buy the product or service; or

[Note: paragraph 2.62, 2nd bullet of JGPP1]

- (c) discourage or prevent the *customer* from seeking or obtaining the product or service from another source;

[Note: paragraph 4.26f of CBG]

- (15) [deleted]

- (16) encourage a *customer* to enter into a *credit agreement* which is secured in any way, to which this section applies, to replace an unsecured *credit agreement* or to consolidate other debts where the *firm* knows, or ought reasonably to know, that it is not in the best interests of the *customer*;

[Note: paragraph 4.26g of CBG]

- (17) unfairly encourage a *customer* to increase, consolidate or refinance (which expression has the same meaning as in ■ CONC 6.7.17 R) an existing debt to the extent that *repayments* under an agreement would be *unsustainable* for the *customer*;

[Note: paragraph 4.26h of CBG]

(18) encourage a *customer* to take out additional *credit* or to extend the term of an existing *credit agreement* where to do so is, or is reasonably likely be, to the detriment of a *customer*;

[Note: paragraph 4.41h of *CBG*]

(19) charge a fee to a *customer* for effecting an introduction (directly or indirectly) to a *lender* or *owner* that provides a type of *credit* or hire of a different type to that:

- (a) promised to the *customer*; or
- (b) promoted by the *firm* to the *customer*; or
- (c) which the *firm* is aware the *customer* is seeking;

unless the *customer*, after the *firm* has explained the reason for the fee, consents to such an introduction;

[Note: paragraph 4.17f of *CBG*]

(20) take a fee from a *customer's* payment account without the *customer's* express authorisation to do so (and "payment account" in this *rule* has the same meaning as in the *Payment Services Regulations*, being an account held in the name of one or more payment service users which is used for the execution of payment transactions);

[Note: paragraph 4.17c of *CBG*]

(21) unfairly pass a *customer's* personal data to a third party without obtaining the *customer's* consent to do so after having explained the reason for disclosing the data;

[Note: paragraph 3.9s of *CBG*]

(22) unfairly pass a *customer's* personal data to a third party for a purpose other than that for which consent was sought and given.

[Note: paragraph 3.9t of *CBG*]

Guidance on unfair business practices

2.5.9

G

(1) It is likely to be an inappropriate offer of an inducement or incentive to enter into an *regulated credit agreement* or a *regulated consumer hire agreement* to state that the offer in relation to the agreement will be withdrawn or the terms and conditions of the offer will worsen if the agreement is not signed immediately or within a stated period after the communication, unless the *firm's* offer on those terms and conditions will in fact be withdrawn or worsen in the period indicated to the *customer*.

[Note: paragraph 3.9j (box) of *CBG*]

(2) An example of unfairly requesting, suggesting or directing a *customer* to a premium rate telephone number is likely to be to do so in relation to a *customer* wishing to complain about the *firm's* service or to request a refund, including, for example, under section 155 of the *CCA*.

[Note: paragraph 6.19f of CBG]

- (3) It is unlikely to be reasonable for it to be necessary for a *customer* to make more than one telephone call exceeding 15 minutes to a *firm* to apply for *credit*. Where a longer call is required, the *firm* should ensure the call is not made on a premium rate telephone number.

[Note: paragraph 3.9i (box) of CBG]

- (4) It is unlikely to be reasonable to request, suggest or direct a *customer* to call the *firm* repeatedly to check on the status of an application. A call to check on the status of an application should not last more than five minutes.

[Note: paragraph 3.9i (box) of CBG]

- (5) A *firm* should disclose to a *customer* the amount, or likely amount, of any fee payable for its services as early as practicable in the *firm's* dealings with the *customer*. ■ CONC 4.4.2 R requires a *credit broker* to disclose any such fee agreed with the *customer* in writing or in another *durable medium*.

[Note: paragraphs 2.2, 7th bullet, 3.7l and 4.9 of CBG]

- (6) Where a *firm* makes an introduction of the type referred to in ■ CONC 2.5.8R (19) the *firm* should ensure that the *customer's* consent is preceded by a full explanation of the key features and key risks of the product to which the introduction applies.

[Note: paragraph 4.17f of CBG]

- (7) A *customer's* personal data must be processed fairly and lawfully and only for specified purposes. While it may be possible to pass special categories of personal data in specified and limited circumstances to certain third parties without the *customer's* consent where a condition of *data protection legislation* applies, a *firm* (other than where it is under a statutory obligation to pass personal data to a third party) should generally seek the *customer's* consent before passing such personal data to a third party.

[Note: paragraph 3.9t (box) of CBG]

- (8) An example of where it is likely to be unfair for a *credit broker* in receipt of a *customer's* personal data to pass it to a third party, is where the personal data is passed on in return for a fee to a claims management firm, without the *customer's* consent.

Firms should note the effect of the *call charges rule* in ■ GEN 7.

2.5.10 R In ■ CONC 2.5.8R (14):

- (1) payment protection product means a product or feature of a product designed to offer *customers* short-term protection against potential loss of income, by providing the means for them to meet (or temporarily suspend) their financial obligations including *repayments* under a *credit agreement*. Payment protection products include, in particular, short term income protection, debt freeze or debt waiver;

- (2) short-term income protection means a contract of insurance which provides a pre-agreed amount paid directly to the policyholder or the policyholder's nominee in the event that the policyholder experiences involuntary unemployment or incapacity as a result of accident or sickness and may be combined with other forms of insurance cover or include other benefits and which:
 - (a) has a maximum time-limited benefit duration;
 - (b) is written for a term which is less than 5 years and not predetermined by the term of any *credit agreement*; and
 - (c) can be terminated by the *insurer*.

2.5.11

G

In ■ CONC 2.5.8R (14) and ■ CONC 2.5.10R (1), the protection offered by a payment protection product will typically be triggered by life events such as accident, sickness and/or unemployment, although other events may be covered where they impact on the *consumer's* ability to meet certain financial commitments. The triggering events will usually be specified in the agreement but may be subject to some discretion (by the provider) at the time of claim.

2.5A Conduct of business: high-cost short-term credit (HCSTC) products on price comparison websites

Application

- 2.5A.1** **R** This section applies to a *firm* which owns or operates a website that displays any terms on which *high-cost short-term credit* products are available from different *lenders* (referred to in this section as a “price comparison website”) and in relation to which it:
- (1) holds itself out as providing a price comparison service or a price service; or
 - (2) describes itself in any way as a price comparison website or a price website; or
 - (3) gives the impression in any way that the website is a price comparison website or a price website.

Listing details of high-cost short-term loans not based on commercial interests or relationships

- 2.5A.2** **R** Where a *firm* lists information on the website it owns or operates concerning *high-cost short-term credit* products in order to enable a *customer* to compare any terms of those products, it must display the information in a way that neither the ranking of products nor the prominence of display of products is based (wholly or partly) on the *firm’s* commercial interests or its commercial relationship with any *person*.

HCSTC price comparison website functionality

- 2.5A.3** **R** A *firm* must ensure that the price comparison website enables:
- (1) a *customer* to enter the value and duration of the *customer’s* desired loan when specifying the criteria for a search; and
 - (2) a search to be made of the *high-cost short-term credit* products covered by the website and the results of the search to be displayed on the basis of only that information.
- 2.5A.4** **G** (1) A *firm’s* obligations under **■ CONC 2.5A.3R(1)** and (2) may be satisfied by enabling a *customer* to select from a reasonable range of options

of values of loan or of durations of loan, when specifying the criteria for a search.

- (2) What is a reasonable range of options for a search will depend, for example, on the breadth of value of loans or on the duration of loans that appear on the price comparison website. For example, it may be reasonable depending on the circumstances to allow a choice of bands of values or durations.

2.5A.5 **R** In response to a request to perform a search for a *high-cost-short-term credit* product, the *firm* must ensure that the price comparison website:

- (1) displays specific information relating to each loan covered by the website which corresponds to the search criteria entered by the *customer* as a separate result;
- (2) ranks those results in order of *total amount payable* in accordance with **■ CONC 3.5.5R(2)**, with the loan with the lowest *total amount payable* first and the highest last; and
- (3) where two or more search results have the same *total amount payable* in accordance with (2), ranks the results according to another criterion permissible under **■ CONC 2.5A**.

2.5A.6 **R** A *firm* must ensure that neither:

- (1) the ranking of the results of a search for a *high-cost-short-term credit* product, nor
- (2) the prominence of the display of the results of such a search, nor
- (3) whether a loan from a *lender* or *credit broker*, whose loans the *firm* arranges to compare or claims to compare, is displayed in the results of such a search,

is based (wholly or partly) on the *firm's* commercial interests or its commercial relationship with any *person*.

2.5A.7 **G** (1) The information displayed on the price comparison website (for example, information concerning a loan, the results of a search or claims about the market coverage of the website) will need to comply with the financial promotion *rules* in **■ CONC 3**. In particular, it will need to comply with the requirement for a communication or a *financial promotion* to be clear, fair and not misleading. The results of a search also need to comply with the detailed *rules* in **■ CONC 3.5**. In particular, the results will require a representative example. The relevant items of the representative example must be representative of what the *firm* reasonably expects, at the date on which the *financial promotion* is made, to be representative of *credit agreements* to which the *representative APR* applies and which are expected to be entered into as a result of the promotion.

- (2) The fact that a *lender* or *credit broker* pays a commission to the *firm* or pays for advertising or other marketing on the price comparison website (and the amount of any such commission or payment) should

not affect the ranking or prominence of display of the results of a search. Such payment should also not affect whether information about a loan from a *lender* or *credit broker* whose loans the *firm* arranges to compare or claims to compare appears in the results of a search.

- (3) ■ CONC 2.5A.6R does not require the *firm* to compare loans from a *lender* or *credit broker* where it has not arranged to do so with that *lender* or *credit broker* nor where it does not claim to compare loans from that *lender* or *credit broker*.
- (4) The *firm* should ensure that any information concerning a loan or any result of a search which relates to another *firm's credit broking* service states prominently that:
 - (a) the *firm* referred to is a *credit broker* and is not a *lender*; or
 - (b) if the *firm* referred to is both a *lender* and a *credit broker*, the *firm* referred to is promoting its services as a *credit broker* and not its services as a *lender*.
- (5) ■ CONC 2.5A.6R does not prevent the *firm*, once the initial results have been displayed in order of *total amount payable*, permitting a *customer* to re-sort the results of a search into a different order.

HCSTC price comparison website financial promotion

2.5A.8 ■ A *firm* must not display a *financial promotion*, other than the result of a search, in or between the results of a search.

2.5A.9 ■ A *firm* must ensure that the results of a search are clearly distinguishable from any other *financial promotion*.

2.5A.10 □ A result of a search may include a hyperlink to the website of the *lender* or *credit broker* in question.

HCSTC price comparison website market coverage

2.5A.11 ■ A *firm* must list in one place on the price comparison website the brand names of *lenders* whose *high-cost short-term credit* products are displayed on the website.



2.6 Conduct of business: debt counselling, debt adjusting and providing credit information services

Application

2.6.1 **R** This section applies to a *firm* with respect to:

- (1) *debt counselling*; or
- (2) *debt adjusting*; or
- (3) *providing credit information services*.

Conduct of business

2.6.2 **R** A *firm* must bring to the attention of a *customer* how the *firm* uses the *customer's* personal data it collects in a manner appropriate to the means of communication used.

[Note: paragraph 2.5e of *DMG*]

Unfair business practices

2.6.3 **R** A *firm* must not:

- (1) by any means, including during a visit to a *customer*, coerce or use pressure to sell its services;

[Note: paragraph 3.12o of *DMG*]

- (2) take advantage of a *customer's* lack of knowledge or understanding of the law relating to consumer credit or to insolvency or to otherwise dealing with debts in order to sell its services;

[Note: paragraph 3.12o of *DMG*]

- (3) in relation to a visit to a *customer*:

- (a) make an appointment to visit or visit at a time which is unreasonable or inconvenient from the *customer's* point of view, unless the *consumer* expressly consents;

[Note: paragraph 3.15a of *DMG*]

- (b) refuse to end the visit, refuse to leave the *customer's* home or ignore the *customer's* request not to return there;

[Note: paragraph 3.15b of *DMG*]

- (c) make a visit which is unreasonably or unnecessarily long;

[Note: paragraph 3.15c of *DMG*]

- (4) conduct a telephone call with a *customer* who has called on a premium rate number for an unreasonable period.

[Note: paragraph 3.18x of *DMG*]

Guidance on unfair business practices

2.6.4

G

- (1) It is an offence for a *person* carrying on the business of *debt counselling, debt adjusting or providing credit information services* to canvass its services off trade premises under section 154 of the CCA. The definition of canvassing in section 153 of the CCA would include an unsolicited personal visit to a *customer's* home.

[Note: paragraph 3.13 of *DMG*]

- (2) Where a long telephone call is required, the *firm* should ensure the call is not made on a premium rate number.
- (3) It is unlikely to be reasonable for it to be necessary for a *customer* to make a call exceeding one hour to a *firm* in relation to *debt counselling or debt adjusting*. Where a call longer than 15 minutes is required for the *firm* to provide its service to the *customer*, the *firm* should ensure the call is not made on a premium rate phone number.
- (4) It is unlikely to be reasonable for a call by the *customer* to check on the status of the *customer's* case to last more than five minutes.
- (5) *Firms* should note the effect of the *call charges rule* in ■ GEN 7.

2.7 Distance marketing

Application

2.7.1

R

- (1) Subject to (2) and (3), this section applies to a *firm* that carries on any distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK*.
- (2) This section does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.
- (3) This section does not apply to an activity in relation to a *consumer hire agreement*.

The distance marketing disclosure rules

2.7.2

R

- (1) Subject to (2), (3) and (4), a *firm* must provide a *consumer* with the distance marketing information (■ CONC 2 Annex 1R) in good time before the *consumer* is bound by a *distance contract* or offer.

[Note: regulation 7(1) of SI 2004/2095]

[Note: articles 3(1) and 4(5) of the *Distance Marketing Directive*]

- (2) Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of ■ CONC 2 Annex 1R.
- (3) Paragraph (1) and the requirement to provide the abbreviated distance marketing information (■ CONC 2 Annex 2R) in ■ CONC 2.7.11 R do not apply to a *distance contract* which is also a *credit agreement* (other than an *authorised non-business overdraft agreement*) in respect of which the *firm* has disclosed the pre-contract credit information required by regulations 3, 4 or 5, as the case may be, and 7, of the *disclosure regulations* (information to be disclosed to a debtor before a regulated consumer credit agreement is made) in accordance with the *disclosure regulations*.

[Note: regulation 7(6) of SI 2004/2095]

- (4) Paragraph (1) and the requirement to provide the abbreviated distance marketing information (■ CONC 2 Annex 2) in ■ CONC 2.7.11 R do not apply to a *distance contract* which is also an *authorised non-business overdraft agreement* in respect of which:

- (a) the *firm* has disclosed the information required by regulation 10(2) of the *disclosure regulations* (authorised non-business overdraft agreements) by means of the Pre-contract Consumer Credit Information (Overdrafts) form in accordance with the *disclosure regulations* and, unless ■ CONC 2.7.12 R would otherwise apply, a copy of the contractual terms and conditions;
- (b) in the case of a voice telephony communication, the *firm* has:
 - (i) disclosed the information required by regulation 10(5) of the *disclosure regulations* in accordance with the *disclosure regulations*; and
 - (ii) provided a copy of the written agreement in accordance with section 61B(2)(b) of the CCA; or
- (c) in the case of an agreement made using a means of distance communication, other than voice telephony communication, where a *firm* is unable to provide the information required by regulation 10(2) of the *disclosure regulations*, the *firm* has:
 - (i) provided a copy of the written agreement in accordance with section 61B(2)(c) of the CCA, and
 - (ii) unless ■ CONC 2.7.12 R would otherwise apply, in relation to the prospective *distance contract*, provided information which accurately reflects the contractual obligations which would arise under the law presumed to be applicable to that contract.

[Note: regulation 7(6) of SI 2004/2095]

2.7.3 **R** A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent.

[Note: regulation 7(2) and (3) of SI 2004/2095]

[Note: article 3(2) of the *Distance Marketing Directive*]

2.7.4 **R** When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purposes of its call explicitly clear at the beginning of the conversation.

[Note: regulation 7(4) of SI 2004/2095]

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

2.7.5 **R** A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase accurately reflects the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: regulation 7(5) of SI 2004/2095]

[Note: article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

2.7.6 **R** A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* (■ CONC 2.7.2 R to ■ CONC 2.7.5 R) in a *durable medium*. That information must be made available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: regulation 8(1) of SI 2004/2095]

[Note: articles 4(5) and 5(1) of the *Distance Marketing Directive*]

2.7.7 **G**

(1) Activities in relation to a *consumer hire agreement* are not financial services within the meaning of the *Distance Marketing Directive* and do not fall within ■ CONC 2.7. Instead such agreements fall within the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334) if they were made before 13 June 2014, or the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) if they were made on or after that date.

(2) A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Commencing performance of the distance contract

2.7.8 **R** The performance of the *distance contract* may only begin after the *consumer* has given approval.

[Note: article 7(1) of the *Distance Marketing Directive*]

Exception: successive operations

2.7.9 **R** In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this chapter only apply to the initial agreement.

[Note: regulation 5(1) of SI 2004/2095]

[Note: article 1(2) of the *Distance Marketing Directive*]

2.7.10 **R**

(1) If there is no initial service agreement but the successive or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (■ CONC 2.7.2 R to ■ CONC 2.7.5 R) will only apply:

(a) when the first operation is performed; and

(b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[Note: regulation 5(2) of SI 2004/2095]

[Note: recital 16 and article 1(2) of the *Distance Marketing Directive*]

(2) In this section:

- (a) "initial service agreement" includes the opening of a bank account or the making of a *credit-token agreement*;
- (b) "operations" includes the deposit or withdrawal of funds to or from a bank account and payments by a credit card or a store card; and
- (c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing retail banking service, does not constitute an "operation" but an additional contract to which the *rules* in this chapter apply.

[Note: regulation 5 of SI 2004/2095]

[Note: recital 17 of the *Distance Marketing Directive*]

Exception: voice telephony communications

2.7.11

R

In the case of voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (■ CONC 2 Annex 2R) needs to be provided during that communication. However, unless another exception applies (such as the exemption for means of distance communication not enabling disclosure), a *firm* must still provide the distance marketing information (■ CONC 2 Annex 1R) in a *durable medium* that is available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: regulation 7(4)(b) of SI 2004/2095]

[Note: articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

Exception: means of distance communication not enabling disclosure

2.7.12

R

A *firm* may provide the distance marketing information (■ CONC 2 Annex 1R) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: article 5(2) of the *Distance Marketing Directive*]

Exception: contracts for payment services

2.7.13

G

Where a *distance contract* covers both *payment services* and *non-payment services*, the exception in ■ CONC 2.7.2R (2) applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 6 of the *Payment Services Regulations*.

Consumer’s right to request paper copies and change the means of communication

2.7.14

R

At any time during the contractual relationship, the *consumer* is entitled, at request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[Note: regulation 8(2) and (4) of SI 2004/2095]

[Note: article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

2.7.15

R

(1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer* in the event of an unsolicited supply of services. The absence of a reply does not constitute consent.

(2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[Note: regulation 15 of SI 2004/2095]

[Note: article 9 of the *Distance Marketing Directive*]

Mandatory nature of consumer’s right

2.7.16

R

If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[Note: article 12 of the *Distance Marketing Directive*]

Contracts governed by law of a third party state

2.7.17

R

If a *firm* proposes to enter into a *distance contract* with a consumer that will be governed by the law of a country outside the *UK*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of the *UK*.

[Note: regulation 16(3) of SI 2004/2095]

[Note: articles 12 and 16 of the *Distance Marketing Directive*]

2.8 E-commerce

Application

- 2.8.1 **R** This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the UK with or for a *person* in the UK.

Information about the firm and its products or services

- 2.8.2 **R** A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R), together with a statement which explains that it is on the *Financial Services Register* and includes its firm reference number;
- (5) if it is a professional firm:
 - (a) the name of the professional body or similar institution with which it is registered;
 - (b) the professional title;
 - (c) a reference to the applicable professional rules and the means to access them; and
 - (d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the *E-Commerce Directive*]

- 2.8.3 **R** If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

- 2.8.4 **R** A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:
- (1) the commercial communication must be clearly identifiable as such;
 - (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
 - (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
 - (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

- 2.8.5 **R** An unsolicited commercial communication sent by e-mail by a *firm* established in the *UK* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

- 2.8.6 **R** A *firm* must (except when otherwise agreed by parties who are not consumers):
- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
 - (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
 - (3) (when an *ECA recipient* places an order through technological means) acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
 - (4) make available to the *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and 11(1) and (2) of the *E-Commerce Directive*]

2.8.7 **R** For the purposes of **■ CONC 2.8.6R (3)**, an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

2.8.8 **R** Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

2.8.9 **R** The requirements relating to the placing and receipt of orders (**■ CONC 2.8.6 R**) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** articles 10(4) and 11(3) of the *E-Commerce Directive*]



2.9 Prohibition of unsolicited credit tokens

Application

2.9.1 **R** This section applies to any *firm*.

Prohibition

2.9.2 **R** (1) A *firm* must not give a *person* a *credit token* if he has not asked for it.

[Note: section 51 of CCA]

(2) A request in (1) must be in a document signed by the *person* making the request, unless the *credit-token agreement* is a *small borrower-lender-supplier agreement*.

(3) Paragraph (1) does not apply to the giving of a *credit token* to a *person*:

- (a) for use under a *credit-token agreement* already made; or
- (b) in renewal or replacement of a *credit token* previously accepted by that *person* under a *credit-token agreement* which continues in force, whether or not varied.

2.9.3 **G** [deleted]

2.10 Mental capacity guidance

Application

2.10.1

G

This section applies:

- (1) to a *firm*;
- (2) in relation to the following decisions:
 - (a) granting *credit* under a *regulated credit agreement*;
 - (b) significantly increasing the amount of *credit* under a *regulated credit agreement*; and
 - (c) setting a *credit limit* for running account credit.

2.10.2

G

- (1) The Mental Capacity Act 2005 sets out the legal framework concerning mental capacity for England and Wales. The Ministry of Justice has issued the Mental Capacity Act Code of Practice which, among other things, includes information on indications of mental capacity limitations and on how to assist people with making decisions.
- (2) The Adults with Incapacity (Scotland) Act 2000 provides the framework in Scotland for safeguarding the welfare and managing the finances of adults who lack capacity due to mental disorder or inability to communicate.
- (3) References in this section to a *firm's* knowledge, understanding, observation, suspicion, assumption or belief include that of the *firm's* employees, *appointed representatives*, agents and any others who act on behalf of the *firm*.

[Note: footnote 2 of MCG]

- (4) In making a decision within ■ CONC 2.10.1 G, a *firm* should consider the *customer's* individual circumstances.

[Note: paragraph 2.4 of MCG]

Mental capacity

2.10.3

G

Mental capacity is a person's ability to make a decision. Whether or not a *customer* has the ability to understand, remember, and weigh up relevant

information will determine whether the *customer* is able to make a responsible borrowing decision based on that information.

[Note: paragraph 2.1 of MCG]

2.10.4 G A *firm* should assume a *customer* has mental capacity at the time the decision has to be made, unless the *firm* knows, or is told by a *person* it reasonably believes should know, or reasonably suspects, that the *customer* lacks capacity.

[Note: paragraph 3.1 of MCG]

2.10.5 G Where a *firm* reasonably suspects a *customer* has, or may have, some form of mental capacity limitation which would constrain the *customer's* ability to make a decision to borrow, the *firm* should not regard the *customer* as lacking capacity to make the decision unless the *firm* has taken reasonable steps without success to assist the *customer* to make a decision.

[Note: paragraph 3.2 of MCG]

2.10.6 G Amongst the most common potential causes of mental capacity limitations are the following examples, a mental health condition, dementia, a learning disability, a developmental disorder, a neurological disability or brain injury and alcohol or drug (including prescribed drugs) induced intoxication.

[Note: paragraph 2.9 of MCG]

2.10.7 G Where a *firm* understands or reasonably suspects a *customer* has a condition of a type in ■ CONC 2.10.6 G, this does not necessarily mean that the *customer* does not have the mental capacity to make an informed borrowing decision. See also ■ CONC 2.10.15 G.

[Note: paragraph 2.10 of MCG]

Indications that a person may have some form of mental capacity limitation

2.10.8 G A *firm* is likely to have reasonable grounds to suspect a *customer* may have some form of mental capacity limitation if the *firm* observes a specific indication (behavioural or otherwise) that could be indicative of some form of limitation of the *customer's* mental capacity. Examples (amongst others) of indications might include:

- (1) where a *firm* has an existing relationship with a *customer*, the *customer* making a decision that appears to the *firm* to be unexpected or out of character;
- (2) a *person* who is likely to have an informed view of the matter, such as a relative, close friend, carer or clinician raising a concern with the *firm* as to the capacity of the *customer* to make a decision about borrowing;
- (3) the *firm* understands or has reason to believe the *customer* has been diagnosed as having an impairment which led to the *customer* not having had mental capacity for similar decisions in the past;

- (4) the *firm* understands or has reason to believe the customer does not understand what the customer is applying for;
- (5) the *firm* understands or has reason to believe the *customer* is unable to understand the information and explanations provided by the *firm*, in particular concerning the key risks of entering into the agreement;
- (6) the *firm* understands or has reason to believe the *customer* is unable to retain information and explanations provided by the *firm* to enable the *customer* to make the decision to borrow;
- (7) the *firm* understands or has reason to believe the *customer* is unable to weigh up the information and explanations provided by the *firm* to enable the *customer* to make the decision to borrow;
- (8) the *customer* is unable to communicate a decision to borrow by any reasonable means;
- (9) the *customer* being confused about the personal information that the *firm* requires, such as date of birth or address.

[Note: paragraphs 3.14 and 3.15 of MCG]

Practices and procedures

- 2.10.9 G
 - (1) A *firm* should not unfairly discriminate against a *customer* who it understands, or reasonably suspects, has a mental capacity limitation, in particular, by inappropriately denying the *customer* access to *credit*.
[Note: paragraph 4.8 of MCG]
 - (2) It would not be inappropriate not to grant *credit* nor significantly increase the amount of *credit* under an agreement nor set a *credit* limit for running account credit where the *firm* reasonably believes the agreement or decision would be voidable at the instance of the *customer* or the agreement is void.
- 2.10.10 G
 - (1) In accordance with *Principle 6*, *firms* should take reasonable steps to ensure they have suitable business practices and procedures in place for the fair treatment of *customers* who they understand, or reasonably suspect, have or may have a mental capacity limitation.
[Note: paragraph 4.1 of MCG]
 - (2) ■ CONC 7.2.1 R requires *firms* to establish and implement arrears policies and procedures, which include policies and procedures for the fair and appropriate treatment of *customers* the *firm* understands or reasonably suspects of having mental capacity limitations.
- 2.10.11 G A *firm* should document practices and procedures to set out the steps that it takes when it receives applications for *credit* from such *customers*.
[Note: paragraph 4.2 of MCG]
- 2.10.12 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation the *firm* should use its business practices and procedures to:

- (1) assist the *customer*, where possible, to make an informed borrowing decision; and
- (2) ensure its lending decision is informed and responsible in the circumstances and mitigates the potential risks to the *customer*.

[Note: paragraphs 4.3 and 4.5 of MCG]

2.10.13 G As stated in the Mental Capacity Act Code of Practice, it is important to balance a person's right to make a decision with that person's right to safety and protection when they are unable to make decisions to protect themselves.

[Note: paragraph 4.5 (box) of MCG]

2.10.14 G *Firms* should present clear, jargon-free information in explaining *credit agreements* in a way that makes it as easy as possible for the *customer* to understand. *Firms* should consider ways to present information in alternative, more 'user-friendly' formats where it appears appropriate to do so, subject to compliance with the relevant statutory requirements.

[Note: paragraph 4.20 of MCG]

2.10.15 G Where a *firm* knows, or reasonably suspects, that a *customer* has or may have one of the conditions in ■ CONC 2.10.6 G this could justifiably act as a trigger for the *firm* to consider the potential specific steps in giving effect to the *firm's* practices and procedures for assessing:

- (1) whether or not the *customer* appears able to understand, remember, and weigh up the information and explanations provided and, when having done so, make an informed borrowing decision;
- (2) whether the *customer* appears able to afford to make *repayments* under the *credit agreement* in a *sustainable* manner without adverse consequences to the *customer's* financial circumstances; and
- (3) whether the *credit* the *customer* is seeking is clearly unsuitable (given the *customer's* individual circumstances and, to the extent that the *firm* is aware, the *customer's* intended use of the *credit*).

[Note: paragraphs 2.5 and 2.11 of MCG]

2.10.16 G *Firms'* practices and procedures should be designed to assist *customers* that *firms* understand have, or reasonably suspect of having, mental capacity limitations to overcome, to the extent possible, the effect of the limitations and place them, to the extent possible, on an equivalent basis to *customers* who do not have such limitations, to increase the likelihood of *customers* being able to make informed borrowing decisions.

[Note: paragraph 4.4 of MCG]

Allowing sufficient time for decisions.....

2.10.17 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation it should consider allowing the *customer*:

- (1) sufficient time in the circumstances to weigh up the information and explanations the *firm* has given;
- (2) sufficient time in the circumstances to make an informed borrowing decision;
- (3) to defer a decision to borrow to a later date.

[Note: paragraphs 4.26, 4.27 and 4.28 of MCG]

Sustainability of borrowing

2.10.18

G

Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation it should apply a high level of scrutiny to the *customer's* application for *credit*, in order to mitigate the risk of the *customer* entering into *unsustainable* borrowing.

[Note: paragraphs 4.32 and 4.33 of MCG]

2.10.19

G

- (1) A *firm* should balance the risk of a *customer* taking on *unsustainable* borrowing against inappropriately or unnecessarily denying *credit* to a *customer*.
- (2) Where a *firm* understands or reasonably suspects a *customer* has or may have a mental capacity limitation, it should undertake an appropriate and effective *creditworthiness assessment* (see ■ CONC 5.2A) and it would be appropriate not to place over-reliance on information provided by the *customer* for the assessment.

[Note: paragraph 4.34 of MCG]

2.10.20

G

Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation the *firm* should take particular care that the *customer* is not provided with *credit* which the *firm* knows, or reasonably believes, to be unsuitable to the *customer's* needs, even where the *credit* would be affordable.

[Note: paragraph 4.43 of MCG]



2.11 Remuneration and performance management policies, procedures and practices

Application

2.11.1 **R** This section applies to a *firm* with respect to:

- (1) *credit-related regulated activity*; and
- (2) *unregulated activity* that is financed by a *credit agreement* in respect of which the *firm* is carrying on *consumer credit lending* or *credit broking*.

2.11.2 **R** This section does not apply to a *firm* subject to:

- (1) any of the remuneration provisions in ■ SYSC 19B (AIFM Remuneration Code) to ■ SYSC 19G (MIFIDPRU Remuneration Code); or
- (2) remuneration provisions made by an *EEA regulator* pursuant to any of the following:
 - (a) *CRD*; or
 - (b) *AIFMD*; or
 - (c) the *UCITS Directive*; or
 - (d) *MiFID*.

Purpose

2.11.3 **G**

- (1) The purpose of this section is to amplify the requirements in *Principle 3* and ■ SYSC 4.1.1R to ensure *firms* identify and effectively manage the risks to *customers* that may arise out of *firms'* policies, procedures and practices for the *remuneration* or performance management of their *employees*, *appointed representatives* and such of their individual agents within the meaning of ■ CONC 14 who interact with *customers*.
- (2) This section does not apply to the commercial *remuneration* or commission arrangements between two or more separate *firms*.
- (3) The risks this section addresses may arise out of a *firm's* policies for remunerating its *employees*, *appointed representatives* or individual agents for performance in carrying on *credit-related regulated activities*. Such risks may arise, for instance, where staff *remuneration*

(for example, a bonus or commission) is determined in whole or in part by the volume or value of *credit* provided or debt collected. These risks may, in addition, arise where an individual's formal (for example, annual appraisals) or informal (for example, day-to-day interactions with their line manager) performance management focuses on targets or measures of the volume or value of *credit* provided or debt collected.

- (4) These risks may also arise out of a *firm's* policies for remunerating such individuals for performance in carrying on *unregulated activities* that are financed by *credit agreements* in respect of which the *firm* is carrying on *consumer credit lending* or *credit broking*. An example is where a *firm* incentivises an individual to sell or supply *goods* or services the purchase of which may be financed (in whole or in part) by a *credit agreement* in respect of which the *firm* is carrying on *credit broking* or *consumer credit lending*. The use of incentives in these circumstances creates the risk that the individual may, for example, provide or arrange *credit* to fund purchases when it is not appropriate to do so.
- (5) Nothing in this section requires a *firm* to act in a way that would be inconsistent with its obligations under employment or contract law.

Requirements

2.11.4

R

- (1) A *firm* must in relation to any risk of failure by the *firm* to comply with its obligations under the *regulatory system* arising from its *remuneration* or performance management policies, procedures and practices:
 - (a) establish, implement and maintain adequate policies and procedures designed to detect this risk; and
 - (b) put in place adequate measures and procedures designed to manage this risk.
- (2) A *firm* must, when deciding how to comply with (1), take into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business.

Examples of measures and procedures to manage risks

2.11.5

G

Examples of measures and procedures which *firms* might introduce, where appropriate, to manage the risks to which this section applies, include:

- (1) undertaking monitoring of the nature of sales activities and *debt collecting*;
- (2) collecting management information to enable the *firm* to monitor and identify trends or patterns in *employee, appointed representative* or individual agent behaviour that could be used to detect these risks;
- (3) establishing procedures to ensure appropriate actions are taken if an *employee, appointed representative* or individual agent is found to have behaved inappropriately; and

(4) maintaining arrangements to ensure the approval, oversight and regular review of *remuneration* and performance management arrangements by an appropriate governance committee or senior management.

2.11.6

G

In relation to ■ CONC 2.11.5G(1), where the activities of an *employee*, *appointed representative* or individual agent are monitored by that *person's* manager, any potential conflicts of interest that arise should be adequately managed (for example, if the manager's *remuneration* is affected by the volume or value of sales or of debt collected by that team member).

Non-Handbook guidance

2.11.7

G

A *firm* should also be aware of the finalised guidance entitled Staff Incentives, Remuneration and Performance Management in Consumer Credit. [Note: see <https://www.fca.org.uk/publications/guidance-consultations/gc17-6-proposals-staff-incentives-and-performance-management>]

Distance marketing information

This Annex belongs to ■ CONC 2.7.2 R (The distance marketing disclosure rules)

Information about the firm

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *UK*, the name of that representative and the geographical address relevant for the *consumer's* relations with that representative.
- (3) Where the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant to the *consumer's* relations with that professional.
- (4) The particulars of the public register in which the *firm* is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (GEN 4), a statement that the *firm* is on the *Financial Services Register* and its firm reference number.

Information about the financial service

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related fees, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the firm's control and that past performance is no indicator of future performance.
- (8) Notice of the possibility that other taxes or costs may exist that are not paid via the *firm* or imposed by it.
- (9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long the *firm's* offer applies as it stands.
- (10) The arrangements for payment and performance.
- (11) Details of any specific additional cost to the *consumer* for using a means of distance communication.

Information about the contract

- (12) The existence or absence of any right to cancel under section 66A or 67 of the CCA or the cancellation *rules* in CONC 11.1 and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those provisions or *rules*, as well as the consequences of not exercising the right to cancel.
- (13) The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
- (14) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.

- (15) Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
- (16) [deleted]
- (17) Any contractual clause on the law applicable to the contract or on the competent court, or both.
- (18) In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.

Information about redress

- (19) How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to that body, together with equivalent information about any other applicable named complaints scheme
- (20) Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities.

[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]

Abbreviated distance marketing information

This Annex belongs to ■ CONC 2.7.11 R.

- (1) The identity of the *person* in contact with the *consumer* and his link with the *firm*.
- (2) A description of the main characteristics of the financial service.
- (3) The total price to be paid by the *consumer* to the *firm* for the financial service, including all taxes paid via the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (4) Notice of the possibility that other taxes and/or costs may exist that are not paid via the *firm* or imposed by the *firm*.
- (5) The existence or absence of any right to cancel in accordance with the cancellation provisions or *rules* (in sections 66A or 67 of the CCA or in CONC 11.1) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay on the basis of the cancellation provisions or *rules*.
- (6) That other information is available on request and the nature of that information

[Note: article 3(3)(b) of the *Distance Marketing Directive*]

Chapter 3

Financial promotions and communications with customers

3.1 Application

[Note: Until 31 March 2015, transitional provisions apply to ■ CONC 3: see ■ CONC TP 6.1]

Who? What?

- 3.1.1 **R** This chapter, unless a *rule* in ■ CONC 3 specifies differently, applies to a *firm*.
- 3.1.2 **G** Under section 39(3) of the *Act*, a *firm* is responsible for *financial promotions communicated* by its *appointed representatives* when acting as such.
- 3.1.3 **R** This chapter, unless a *rule* in ■ CONC 3 specifies differently, applies to:
- (1) a communication with a *customer* in relation to a *credit agreement*;
 - (2) the *communication* or *approval* for *communication* of a *financial promotion* in relation to a *credit agreement*;
 - (3) a communication with a *customer* in relation to *credit broking*;
 - (4) the *communication* or *approval* for *communication* of a *financial promotion* in relation to *credit broking*;
 - (5) a communication with a *borrower* or a prospective *borrower* in relation to *operating an electronic system in relation to lending*; and
 - (6) the *communication* or *approval* for *communication* of a *financial promotion* to a *borrower* or a prospective *borrower* in relation to *operating an electronic system in relation to lending*.
- 3.1.4 **R** The clear fair and not misleading *rule* in ■ CONC 3.3.1 R and the general requirements *rule* in ■ CONC 3.3.2 R and the *guidance* in ■ CONC 3.3.5 G to ■ CONC 3.3.11 G also, unless a *rule* or *guidance* in those paragraphs specifies differently, apply to:
- (1) a communication with a *customer* in relation to *debt counselling* or *debt adjusting*; and
 - (2) the *communication* or *approval* for *communication* of a *financial promotion* in relation to *debt counselling* or *debt adjusting*.

3.1.4A **G** *Firms are reminded that the rules and guidance in ■ CONC 3.9 also apply to financial promotions and communications with a customer in relation to debt counselling and debt adjusting.*

3.1.5 **R** ■ CONC 3.3.1 R also applies to:

- (1) a communication with a customer in relation to a consumer hire agreement;
- (2) the communication or approval for communication of a financial promotion in relation to a consumer hire agreement; and
- (3) a communication with a customer in relation to providing credit information services.

3.1.6 **R** ■ CONC 3 does not apply to:

- (1) a financial promotion or a communication which expressly or by implication indicates clearly that it is solely promoting credit agreements or consumer hire agreements or P2P agreements for the purposes in each case of a customer's business;
- (2) a financial promotion or a communication to the extent that it relates to qualifying credit; or
- (3) an excluded communication.

3.1.7 **R**

- (1) ■ CONC 3 does not apply (apart from the provisions in (2)) to a financial promotion or communication that consists of only one or more of the following:
 - (a) the name or a trading name of the firm (or its appointed representative);
 - (b) a logo;
 - (c) a contact point (address (including e-mail address), telephone, facsimile number and website address);
 - (d) a brief, factual description of the type of product or service provided by the firm.
- (2) The provisions in ■ CONC 3 which apply to a financial promotion or communication which falls within (1) are:
 - (a) ■ CONC 3.1, ■ CONC 3.5.1 R and ■ CONC 3.6.1 R (application);
 - (b) ■ CONC 3.3.1 R (clear, fair and not misleading);
 - (c) ■ CONC 3.3.3 R (credit regardless of status);
 - (d) ■ CONC 3.5.3 R, ■ CONC 3.5.5 R, ■ CONC 3.6.6 R (requirement for representative example or typical APR etc);
 - (e) ■ CONC 3.5.7 R (other financial promotions requiring a representative APR);
 - (f) ■ CONC 3.5.12 R (restricted expressions) and ■ CONC 3.6.8 R (restricted expressions); and

(g) any other *rules* in *CONC* which are necessary or expedient to apply the rules in (a) to (f).

3.1.8

G

■ CONC 3.1.7R (1) does not enable detailed information to be given about *credit* available from the *firm*. *Firms* should note that the image advertising exclusion in ■ CONC 3.1.7R (1) is subject to compliance with the *rules* specified in (2), including the *rules* which require the inclusion of a *representative APR* in specified circumstances (although the *rules* in ■ CONC 3.5.9R about the wording that must accompany a *representative APR* do not apply to image advertising). A name or logo may trigger the requirement to include a *representative APR*. *Firms* should not include any information not referred to in ■ CONC 3.1.7R (1) and should avoid the use of names, logos or addresses, for example, which attempt to convey additional product or cost-related information.

Where?

3.1.9

R

This chapter applies to a *firm* in relation to:

- (1) a communication with, or the *communication* or *approval* for *communication* of a *financial promotion* to, a *person* in the *UK*; and
- (2) the *communication* of an *unsolicited real time financial promotion*, unless it is made from a place, and for the purposes of a business which is only carried on, outside the *UK*;
- (3) [deleted]

and for the purposes of the application of this chapter, it is immaterial whether the *credit agreement* or the *consumer hire agreement* to which the *financial promotion* or communication relates is subject to the law of a country outside the *UK*.



3.2 Financial promotion general guidance

3.2.1 **G** The *rules* in this chapter adopt various concepts from the restriction on financial promotions by *unauthorised persons* in section 21(1) of the Act (Restrictions on financial promotion). *Guidance* on that restriction and the communications which are exempt from it is contained in ■ PERG 8 (Financial promotion and related activities) and that *guidance* will be relevant to interpreting these *rules*. In particular, *guidance* on the meaning of:

- (1) 'communicate' is in ■ PERG 8.6 (Communicate); and
- (2) 'invitation or inducement' and 'engage in investment activity' (two elements which, with 'communicate', make up the definition of 'financial promotion') is in ■ PERG 8.4 (Invitation or inducement).

3.2.2 **G** The Privacy and Electronic Communications (EC Directive) Regulations 2003 apply to unsolicited telephone calls, fax messages and electronic mail messages for direct marketing purposes. The Information Commissioner's Office has produced guidance on the Regulations.

Meaning of "prominent"

3.2.3 **G** For the purposes of this chapter, information or a statement included in a *financial promotion* or communication will not be treated as prominent unless it is presented, in relation to the other content of the *financial promotion* or communication, in such a way that it is likely that the attention of the average *customer* to whom the *financial promotion* or communication is directed would be drawn to it.

Approving financial promotions: permission

3.2.4 **G**

- (1) The effect of section 55NA of the Act is that a *firm* is unable to approve a *financial promotion* unless:
 - (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
 - (b) an *approver permission exemption* applies.
- (2) ■ SUP 6A contains *guidance* on applying for *approver permission*.

3.3 The clear fair and not misleading rule and general requirements

3.3.1

R

(1) A *firm* must ensure that a communication or a *financial promotion* is clear, fair, and not misleading.

[**Note:** paragraphs 2.2 of *ILG*, 3.16 of *DMG* and 3.1 of *CBG*]

(1A) A *firm* must ensure that each communication and each *financial promotion*:

- (a) is clearly identifiable as such;
- (b) is accurate;
- (c) is balanced and, in particular, does not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;
- (d) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to which it is directed, or by which it is likely to be received; and
- (e) does not disguise, omit, diminish or obscure important information, statements or warnings.

(1B) A *firm* must ensure that, where a communication or *financial promotion* contains a comparison or contrast, the comparison or contrast is presented in a fair and balanced way and is meaningful.

(2) If, for a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with (1), (1A) and (1B), a contravention does not give rise to a right of action under section 138D of the *Act*.

General requirements

3.3.2

R

A *firm* must ensure that a communication or a *financial promotion*:

- (1) uses plain and intelligible language;
- (2) is easily legible (or, in the case of any information given orally, clearly audible);
- (3) specifies the name of the *person* making the communication or *communicating* the *financial promotion* or the *person* on whose behalf the *financial promotion* is made; and

(4) in the case of a communication or *financial promotion* in relation to *credit broking*, specifies the name of the *lender* (where it is known).

[Note: paragraph 4.8a of CBG]

[Note: regulation 3 of CCAR 2004 and regulation 3 of CCAR 2010]

3.3.3

R

(1) A *firm* must not in a *financial promotion* or a communication to a *customer* state or imply that *credit* is available regardless of the *customer's* financial circumstances or status.

[Note: paragraphs 3.7o of CBG and 5.2 of ILG]

(2) This *rule* does not apply to a *financial promotion* or communication relating to a *credit agreement* under which a *person* takes an article in *pawn* and the *customer's* total financial liability (including capital, interest and all other charges) is limited under the agreement to the proceeds of sale which would represent the true market value (within the meaning of section 121 of the CCA) of the article or articles *pawned* by the *customer*.

3.3.4

G

(1) A *firm's* trading name, internet address or logo, in particular, could fall within ■ CONC 3.3.3 R.

[Note: paragraph 5.2 (box) of ILG]

(2) A statement or an implication that *credit* is guaranteed or pre-approved, or is not subject to any *credit* checks or other assessment of creditworthiness, may contravene ■ CONC 3.3.3R. *Firms* are reminded of the requirements of ■ CONC 5 (Responsible lending).

Guidance on clear, fair and not misleading

3.3.5

G

[deleted]

3.3.6

G

If a communication or a *financial promotion* names the *FCA*, *PRA* or both as the regulator of a *firm* and refers to matters not regulated by the *FCA*, *PRA* or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FCA*, *PRA* or both.

3.3.7

G

When *communicating* information, a *firm* should consider whether omission of any relevant fact will result in information given to the *customer* being insufficient, unclear, unfair or misleading.

3.3.8

G

A comparison or contrast to which ■ CONC 3.3.1R(1B) applies may be a comparison or contrast with another *person*, or with another product or service, whether offered by the *firm* or by another *person*.

3.3.9 G A *firm* should in a *financial promotion* or other communication which includes a premium rate telephone number indicate in a prominent way the likely total cost of a premium rate call including the price per minute of a call, the likely duration of calls and the total cost a *customer* would incur if the *customer* calls for the full estimated duration. *Firms* should note the effect of the *call charges rule* in ■ GEN 7.

[Note: paragraphs 3.9h of *CBG* and 3.18x (box) of *DMG*]

3.3.9A G A *firm* is reminded of its obligations under ■ ESG 4.3.1R when it *communicates* or *approves a financial promotion* that references the *sustainability characteristics* of a product or service.

Unfair business practices: financial promotions and communications

3.3.10 G Examples of practices that are likely to contravene the clear, fair and not misleading *rule* in ■ CONC 3.3.1 R include:

(1) stating or implying that a *firm* is a *lender* (where this is not the case);

[Note: paragraph 3.7e (box) of *CBG*]

(2) misleading a *customer* as to the availability of a particular *credit* product;

[Note: paragraph 3.9p of *CBG*]

(3) concealing or misrepresenting the identity or name of the *firm*;

[Note: paragraph 3.7g (box) of *CBG*]

(4) using false testimonials, endorsements or case studies;

[Note: paragraph 3.18s of *DMG*]

(5) using false or unsubstantiated claims as to the *firm's* size or experience or pre-eminence;

[Note: paragraph 3.18t of *DMG*]

(6) in relation to *debt solutions*, claiming or implying that a *customer* will be free of debt in a specified period of time or making statements emphasising a debt-free life or that a *debt solution* is a stress free or immediate solution;

[Note: paragraphs 3.18u and 3.18v of *DMG*]

(7) providing online tools, which recommend a particular *debt solution* as suitable for a *customer*, such as, budget calculators or advice websites:

(a) which do not carry out a sufficiently full assessment of a *customer's* financial position; or

(b) which fail to provide clear warnings to a *customer* that financial data entered into a tool has to be accurate;

[Note: paragraph 3.20c of *DMG*]

(8) emphasising any savings available to a *customer* by proposing to reschedule a *customer's* debts, without explaining that a *lender* is not obliged to accept less in settlement of the *customer's* debts than it is

entitled to, nor to freeze interest and charges and that the result may be to increase the *total amount payable* or the period over which it is to be paid and to impair the *customer's credit rating*;

[Note: paragraph 3.18l of *DMG*]

- (9) suggesting that a *customer's repayments* will be lower under a proposed agreement without also mentioning (where applicable) that the duration of the agreement will be longer or that the *total amount payable* will be higher.

[Note: paragraph 5.13 of *ILG*]

Guidance on misleading introductions

3.3.11

G

Misleading a *customer* as to the availability of a particular *credit* product is likely to include stating or implying that the *firm* will introduce the *customer* to a provider of a standard personal loan based on repayment by instalments or of an overdraft facility on a current account (for example, a bank or building society) or of a credit card, but instead introducing the *customer* to a provider of *high-cost short-term credit*.

[Note: paragraph 3.9p (box) of *CBG*]

“Buy now pay later” or similar offers

G

- (1) *Firms* are reminded that the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), as well as *Principle 7* and ■ CONC 3.3.1R, apply to communications and *financial promotions* in relation to *BNPL agreements*, including communications with *borrowers* under existing agreements.
- (2) A communication or *financial promotion* in relation to a *BNPL agreement* is likely to be misleading by omission if it:
 - (a) refers to a zero percentage or low interest, introductory or other promotional offer available under a *BNPL agreement*;
 - (b) does so in a way that is likely to influence a *customer's* decision about whether to enter into a *BNPL agreement* or whether and how to make use of *credit* available under an existing *BNPL agreement*; and
 - (c) does not also include in a fair and prominent manner material information about relevant risks.
- (3) A *firm* should also consider whether other communications or *financial promotions* in connection with *BNPL agreements* could be misleading by omission if those communications or *financial promotions* do not also include in a fair and prominent manner material information about relevant risks.
- (4) Relevant risks relating to *BNPL credit* include the limitations that apply to any zero percentage or low interest, introductory or other FCA 2019/72 Page 4 of 6 promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of

that interest or those charges and the amount of principal on which the interest would be charged. The average *consumer* is likely to need information about these matters to make an informed decision about whether to enter into a *BNPL agreement*, or whether and how to make use of *credit* available under an existing *BNPL agreement*.

- (5) The information that a communication or *financial promotion* about a *BNPL agreement* is required to include to avoid a misleading effect, and how that information should be presented, will depend on the context of the communication or *financial promotion*, including its medium and any other information that the *firm* has provided to the recipient.

Non-business overdraft agreements

3.3.12

G

A communication or a *financial promotion* that refers to sums available by way of an *authorised non-business overdraft agreement* should make clear that such sums constitute borrowing or credit.

3.4 Risk warning for high-cost short-term credit

[Note: Until the end of 30 June 2014, transitional provisions apply to
■ CONC 3.4: see ■ CONC TP 31]

Risk warnings

3.4.1

R

(1) A firm must not *communicate* or *approve* for communication a financial promotion in relation to *high-cost short-term credit*, unless it contains the following risk warning:

“Warning: Late repayment can cause you serious money problems. For help, go to moneyhelper.org.uk”.

(2) [deleted]

(3) Instead of the website address in paragraph (1), a firm may include the *MoneyHelper* logo registered UK trade mark number UK00003476779.

(4) The risk warning must be included in a *financial promotion* in a prominent way.

3.4.2

G

MoneyHelper has granted a licence to use the logo referred to in ■ CONC 3.4.1R (3) for the purposes of that rule. The terms of the licence are available from *MoneyHelper*.

3.5 Financial promotions about credit agreements not secured on land

Application

3.5.1

R

This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending*;
- (2) to a *financial promotion* in relation to *credit broking* in relation to *regulated credit agreements*;
- (3) to a *financial promotion* in relation to activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to what would be *regulated credit agreements* but for a relevant provision, but only where the *firm* also carries on such activities in relation to *regulated credit agreements*;

and in each case, other than to *financial promotions* to the extent that they relate to agreements secured on *land*.

Prohibition on financial promotion where goods etc. not sold for cash

3.5.2

R

A *financial promotion* must not be *communicated* where it indicates a *firm* is willing to provide *credit* under a regulated *restricted-use credit agreement* relating to *goods* or services to be supplied by any *person*, when at the time the *financial promotion* is *communicated*, the *firm* or any *supplier* under such an agreement does not hold itself out as prepared to sell the *goods* or provide the services (as the case may be) for cash.

[Note: section 45 of CCA]

Content of financial promotions

3.5.3

R

- (1) Where a *financial promotion* indicates a rate of interest or an amount relating to the *cost of credit* whether expressed as a sum of money or a proportion of a specified amount, the *financial promotion* must also:
 - (a) include a representative example in accordance with
■ CONC 3.5.5 R, and
 - (b) specify a postal address at which the *person* making the *financial promotion* may be contacted.

[Note: regulation 4(1) of CCAR 2010]

- (2) Paragraph (1)(a) does not apply where the *financial promotion*:
 - (a) falls within ■ CONC 3.5.7 R; and
 - (b) does not indicate a rate of interest or an amount relating to the *cost of credit* other than the *representative APR*.

[Note: regulation 4(2) of CCAR 2010]

Paragraph (1)(a) also does not apply where the *financial promotion* relates only to *credit agreements* in respect of which the *APR* is 0%.

- (3) Paragraph (1)(b) does not apply to *financial promotions*:
 - (a) communicated by means of television or radio broadcast; or
 - (b) in any form on the premises of a *dealer* or *lender*, other than *financial promotions* in writing which *customers* are intended to take away; or
 - (c) which include the name and address of a *dealer*; or
 - (d) which include the name and postal address of a *credit broker*.

[Note: regulation 4(1)b of CCAR 2010]

Guidance on showing interest rates and cost of credit

3.5.4

G

- (1) A rate of interest for the purpose of ■ CONC 3.5.3R (1) is not limited to an annual rate of interest but would include a *monthly* or daily rate or an *APR*. It would also include reference to 0% credit (but where the *APR* is 0% and ■ CONC 3.5.3R(2A) applies, a representative example is not required). An amount relating to the *cost of credit* would include the amount of any fee or charge, or any *repayment of credit* (where it includes interest or other charges).

[Note: paragraph 6.7 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (2) If a *rule* in ■ CONC 3.5 applies to a rate of interest or a charge, and the rate or charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

Representative example

3.5.5

R

- (1) The representative example in ■ CONC 3.5.3R (1) must comprise the following items of information:
 - (a) the rate of interest, and whether it is fixed or variable or both, expressed as a fixed or variable percentage applied on an annual basis to the amount of *credit* drawn down;
 - (b) the nature and amount of any other charge included in the *total charge for credit*;
 - (c) the *total amount of credit*;
 - (d) the *representative APR*;

- (e) in the case of *credit* in the form of a deferred payment for specific *goods, services, land* or other things, the *cash price* and the amount of any *advance payment*;
- (f) the duration of the agreement;
- (g) the *total amount payable*; and
- (h) the amount of each *repayment of credit*.

[Note: regulation 5(1) of CCAR 2010]

[Note: article 4 of the *Consumer Credit Directive*]

- (2) The items of information required by (1)(a), (b), (c), (e), (f) and (g) must be those which the *firm communicating or approving the financial promotion* reasonably expects at the date on which the *financial promotion* is made to be representative of *credit agreements* to which the *representative APR* applies and which are expected to be entered into as a result of the promotion.

[Note: regulation 5(2) of CCAR 2010]

- (3) For (1)(e), the reference in (2) to "*credit agreements to which the representative APR applies*" is to agreements providing *credit* for the purchase of specific *goods, services, land* or other things, to which the *representative APR* applies.

[Note: regulation 5(3) of CCAR 2010]

- (4) For the purposes of (1)(a), where the *credit agreement* provides for different ways of drawdown with different rates of interest, the rate of interest shall be assumed to be the highest rate applied to the most common drawdown mechanism for the product to which the agreement relates.

[Note: regulation 5(4) of CCAR 2010]

- (5) The information required by (1) must be:
- (a) specified in a clear, concise and prominent way;
 - (b) accompanied by the words "*representative example*";
 - (c) presented together with each item of information being given equal prominence; and
 - (d) given no less prominence than:
 - (i) any other information relating to the *cost of credit* in the *financial promotion*, except for any statement relating to an obligation to enter into a contract for an *ancillary service* referred to in ■ CONC 3.5.10 R; and
 - (ii) any indication or incentive of a kind referred to in ■ CONC 3.5.7 R.

[Note: regulation 5(6) of CCAR 2010]

- (6) A *financial promotion* for a *credit agreement* with no fixed duration is not required to include the duration of the agreement or the *total amount payable* or the amount of each *repayment of credit*.

[Note: regulation 5(1)f of CCAR 2010]

- (7) A *financial promotion* for an *authorised non-business overdraft agreement* provided by a *firm* of a type listed in ■ CONC 5C.1.2R(2) is not required to include a *representative APR*.

[Note: regulation 5(5) of CCAR 2010]

Guidance on the representative example

3.5.6

G

- (1) The representative example in ■ CONC 3.5.5 R should not be limited to being representative of agreements featured in the *financial promotion* if the *firm communicating or approving the financial promotion* expects other agreements to be entered into as a result of the *financial promotion*, whether with the *firm* or with a third party.

[Note: paragraph 6.8 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (1A) *Firms* are referred to the *Glossary* definition of *representative APR* and reminded that they should consider the agreements which they reasonably expect to be entered into (whether by the *firm* or by another *person*) as a result of the *financial promotion*, and ensure that the 51% test in that definition takes account of the *APR* of each of those agreements. The representative example in ■ CONC 3.5.5R should be representative of agreements to which the *representative APR* applies.
- (1B) The example referred to in (1) is unlikely to be representative if, for example, most *customers* entering into agreements as a result of the *financial promotion* are likely to do so for a lower amount of *credit* than that indicated in the example, or with higher rates of interest or other charges than those indicated in the example.
- (1C)
 - (a) The *guidance* in this provision is relevant to the calculation of an *APR* for an *authorised non-business overdraft agreement* which is a necessary first step when calculating the *representative APR* in a *financial promotion* for the *authorised non-business overdraft agreement*. It is, therefore, also relevant to the calculation of the *representative APR* in a *financial promotion* for an *authorised non-business overdraft agreement*.
 - (b) This *guidance* relates to a situation where the terms and conditions that apply to an *authorised non-business overdraft agreement* provide that no interest or other charges are payable in relation to a drawing (authorised in advance) up to a specified amount (including in circumstances where the drawdown exceeds the specified amount). This is sometimes referred to as a “fee-free amount”.
 - (c) *Firms* are reminded that ■ CONC 5C.2.1R(7) prohibits certain types of fee-free amounts in relation to overdrafts where the benefit of the fee-free amount is liable to be lost in certain circumstances.
 - (d)
 - (i) For the purposes of calculating the *total charge for credit* and the *APR*, ■ CONC App 1.2.5R (Assumptions for calculation) sets out various assumptions. A number of these assumptions

apply “where necessary” to deal in a consistent and comparable way with factors that are not certain at the time the *total charge for credit* or *APR* is calculated.

- (ii) Where, however, the terms of a permissible fee-free amount that apply to an *authorised non-business overdraft agreement* are known at the time the *APR* is calculated (and the incidence of the benefit of the fee-free amount is certain if the overdraft is used), the *APR* calculation should reflect those terms. In that situation, it is unlikely to be necessary to make the assumption that the fee-free amount does not exist under ■ CONC App 1.2.5R.

- (1D) (a) (i) This *guidance* is relevant to whether to include account fees in the calculation of the *APR* for an *authorised non-business overdraft agreement*. The type of account fee this *guidance* is intended to address is a periodic charge a *customer* is required to pay in order to obtain and maintain access to a personal current account that has an overdraft facility.
 - (ii) ■ CONC App 1.2.3R (Total charge for credit) provides that the costs of maintaining an account recording both payment transactions and drawdowns are included in the *total cost of credit to the borrower*. There is an exception to this rule (see ■ CONC App 1.2.3R(3)) where: “(a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the *regulated credit agreement* or in any other agreement with the *borrower*; (b) in the case of an *overdraft facility* the costs do not relate to that facility.”
 - (iii) Whether an account fee is required to be included in the calculation of an *APR* depends on whether the *credit* under the associated *authorised non-business overdraft agreement* can be obtained on the same terms without incurring the account fee. If an *authorised non-business overdraft agreement* is not available on the same equally favourable terms without the imposition of the fee, that fee is likely to be considered to “relate” to the overdraft facility.
- (b) The following are examples of situations where it is likely that an account fee should be included in the calculation of the *total charge for credit* and the *APR* for an *authorised non-business overdraft agreement*.
 - (i) A personal current account that is subject to an account fee, one of the features of which is an arranged overdraft facility with more favourable terms (for example, a lower interest rate) than those offered on accounts that do not require the payment of an account fee.
 - (ii) A *firm* that offers personal current accounts with associated arranged overdraft facilities in respect of all of which there is an account fee.
 - (c) A *firm* may offer a “packaged bank account” that is a composite product with a number of constituent elements, one of which is an overdraft facility, but others of which are different services. If there is a fee for an optional non-overdraft element of the package that the *customer* can avoid by choosing not to have that element of the package, and the *customer* can still have the

overdraft element of the package on the same terms, that avoidable fee should not be included in the *APR* calculation.

- (2) Where the agreement provides for compounding, the rate of interest in ■ CONC 3.5.5R (1) should generally be the effective annual interest rate and *lenders* should use the same assumptions to calculate this interest rate as they do for the *APR*; the assumptions set out in ■ CONC App 1.2. If a *firm* uses a different rate to calculate the rate of interest in ■ CONC 3.5.5R (1) it must clearly explain this to the *customer*, so that the *customer* is clear whether and to what extent the rate used is comparable with rates shown by other *lenders*.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (3) [deleted]

- (4) For charges other than interest which are included in the *total charge for credit*, the *financial promotion* should in each case make clear the nature of the charge and the amount of the charge if ascertainable or a reasonable estimate of the charge, making clear in that case it is an estimate.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (5) The *total amount of credit* equates to the sum available to the *customer* to use and does not include charges which are financed by the *credit agreement*; those are part of the *total charge for credit*.
- (6) For showing the *cash price*, the total *cash price* of all items should be shown, together with the price of each item individually. For the purposes of the *Glossary* definition of *cash price* in this context, a discount will be treated as generally available if most *customers* paying in cash are likely to be, or would reasonably expect to be, offered or given the discount.
- (7) Other than in the case of an *authorised non-business overdraft agreement* provided by a *firm* of a type listed in ■ CONC 5C.1.2R(2), where a *financial promotion* for an *authorised non-business overdraft agreement* is required to include a representative example, one of the items that must be included in the example is the *representative APR*.

Other financial promotions requiring a representative APR

3.5.7

R

- (1) A *financial promotion* must include the *representative APR* if it:
 - (a) states or implies that *credit* is available to *individuals* who might otherwise consider their access to *credit* restricted; or
 - (b) includes a favourable comparison relating to the *credit*, whether express or implied, with another *person*, product or service; or
 - (c) includes an incentive to apply for *credit* or to enter into an agreement under which *credit* is provided.

[Note: regulation 6 of *CCAR 2010*]

3.5.8

G

- (1A) A *financial promotion* which states that a cash sum is available for opening an account, other than a current account mortgage, which is a payment account within the meaning of the *Payment Accounts Regulations* and which does not refer to the availability of *credit* under an *authorised non-business overdraft agreement* in connection with that account must not be regarded as including an incentive to apply for *credit* or to enter into an agreement under which *credit* is provided for the purposes of (1)(c).
- (2) The *representative APR* must be given no less prominence than any of the matters in (1).
- (3) This *rule* does not apply to a *financial promotion*:
 - (a) for an *authorised non-business overdraft agreement* provided by a *firm* of a type listed in ■ CONC 5C.1.2R(2); or
 - (b) for a *credit agreement* in respect of which the *APR* is 0%; or
 - (c) for a *credit agreement* to be entered into by a *community finance organisation as lender*.

- (1) A *firm's* trading name, website address or logo could trigger the requirements in ■ CONC 3.5.7R(1).
- (2) For the purposes of ■ CONC 3.5.7R(1)(b), a comparison with another *person*, product or service includes a reference (whether stated or implied) to:
 - (a) the terms on which, or the way in which, *credit* is offered or made available; or
 - (b) the nature or quality or any other aspect of the service relating to the *credit* that the *person* offers or provides (or does not offer or provide).

The *financial promotion* does not need to specify a particular *person*, product or service for there to be a comparison.
- (3) A *financial promotion* does not necessarily include a comparison where it merely refers to a *person*, product or service in a factual manner, but there will be an implied comparison for the purposes of ■ CONC 3.5.7R(1)(b) if it may reasonably be inferred that a comparison is being made.
- (4) A statement about matters such as the speed or ease of processing, considering or granting an application, of entering into an agreement, or of making funds available, may constitute an incentive for the purposes of ■ CONC 3.5.7R(1)(c). This will depend on the context of the statement and the circumstances in which it is made. A statement will be an incentive where it is likely to persuade or influence a *customer* to apply for *credit* or to enter into an agreement under which *credit* is provided, or is presented in a way which is likely to have that effect.
- (5) Other examples of things which could be incentives are gifts, special offers, discounts and rewards.

- (6) ■ CONC 3.5.7R applies to a *firm* with respect to a *financial promotion* for an *authorised non-business overdraft agreement* except a *firm* of a type listed in ■ CONC 5C.1.2R(2).

Annual percentage rate of charge

3.5.9

R

In a *financial promotion*:

- (1) an *APR* must be shown as “%APR”;
- (2) where an *APR* is subject to change it must be accompanied by the word “variable”;
- (3) the *representative APR* must be accompanied by the word “representative”; and
- (4) where the *financial promotion* is:
 - (a) in writing; and
 - (b) for an *authorised non-business overdraft agreement*, the *representative APR* must be accompanied by the following information:
 - (c) a statement as follows:

“How does our overdraft compare?”; and
 - (d) wording, in plain and intelligible language, that explains to *customers* that the purpose of a *representative APR* is to enable *customers* to compare the costs associated with different *credit* products; and

this information must be given reasonable prominence and be in sufficiently close proximity to the *representative APR* to make it reasonably apparent to *customers* that the relevant wording relates to the *representative APR*.

[Note: regulation 7 of CCAR 2010]

3.5.9A

R

■ CONC 3.5.9R(4) applies only to *financial promotions* that are in writing. In accordance with ■ GEN 2.2.14R, this means *financial promotions* that are in legible form and capable of being reproduced on paper, irrespective of the medium used. The *rule* does not, therefore, apply to a *financial promotion* communicated by means of television or radio broadcast.

Ancillary services

3.5.10

R

- (1) A *financial promotion* must include a clear, concise and prominent statement in respect of any obligation to enter into a contract for an *ancillary service* where:
 - (a) the conclusion of that contract is compulsory in order to obtain the *credit* or to obtain it on the terms and conditions promoted; and
 - (b) the cost of that *ancillary service* cannot be determined in advance.

[Note: regulation 8 of CCAR 2010]

- (2) The statement in (1) must be presented together with any *representative APR* included in the *financial promotion*.
- (3) This rule does not apply to a *financial promotion* for an *authorised non-business overdraft agreement*.

Security

3.5.11

R

Where a *financial promotion* concerns a facility for which *security* is or may be required, the promotion must:

- (1) state that *security* is or may be required; and
- (2) specify the nature of the *security*.

[Note: regulation 9 of CCAR 2010]

Restricted expressions

3.5.12

R

- (1) A *financial promotion* must not include:
 - (a) the word "overdraft" or any similar expression as describing any agreement for *running-account credit*, except where an agreement enables a *customer* to overdraw on a current account;
 - (b) the expression "interest free" or any similar expression indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by *credit* than he would be liable to pay as a cash purchaser for the like transaction, except where the *total amount payable* does not exceed the *cash price*;
 - (c) the expression "no deposit" or any similar expression, except where no *advance payments* are to be; or
 - (d) [deleted];
 - (e) the expression "gift", "present" or any similar expression, except where there are no conditions which would require the *customer* to repay the *credit* or to return the item that is the subject of the claim.

[Note: regulation 10 of CCAR 2010]

- (2) A *financial promotion* must not include for a *repayment of credit* the expression "weekly equivalent" or any expression to like effect or any expression of any other periodical equivalent, unless weekly *repayments* or the other periodical payments are provided for under the agreement.
- (3) In this rule, "cash purchaser" means a *person* who, for money consideration, acquires *goods, land* or other things or is provided with services under a transaction which is not financed by *credit*.

3.5.13

R

Total charge for credit and APR

- (1) Where a *financial promotion* is about *running-account credit* and the *credit limit* applicable is not yet known on the date the *financial promotion* is made, but it is known that it will be less than £1,200, the *credit limit* must be assumed to be an amount equal to that maximum limit.

[Note: paragraph 1 of schedule to *CCAR 2010*]

- (2) The assumption in (1) applies in place of the assumption in ■ CONC App 1.2.5 R for the purpose of calculating the *total charge for credit*.

Total charge for credit and APR: tolerances for APR

- (3) For a *financial promotion*, it is sufficient to show an *APR* if there is included in the promotion:
- (a) a rate which exceeds the *APR* by not more than one; or
 - (b) a rate which falls short of the *APR* by not more than 0.1; or
 - (c) where applicable, a rate determined in accordance with (4) or (5).

[Note: paragraph 2 of schedule to *CCAR 2010*]

Total charge for credit and APR: tolerance where repayments are nearly equal

- (4) Where an agreement under which all *repayments* but one are equal and that one *repayment* does not differ from any other *repayment* by more whole pence than there are *repayments of credit*, there may be included in a *financial promotion* about the agreement a rate found under ■ CONC App 1.2.4 R as if that one *repayment* were equal to the other *repayments* to be made under the agreement.

[Note: paragraph 3 of schedule to *CCAR 2010*]

Total charge for credit and APR: tolerance regarding interval between relevant date and first repayment

- (5) Where a *credit agreement* provides that:
- (a) three or more *repayments* are to be made at equal intervals; and
 - (b) the interval between the relevant date and the first *repayment* is greater than the interval between the *repayments*;
- a *financial promotion* about the agreement may include a rate found under ■ CONC App 1.2.4 R as if the interval between the relevant date and the first *repayment* were shortened so as to be equal to the interval between the *repayments*.

[Note: paragraph 4 of schedule to *CCAR 2010*]

- (6) The relevant date in (5) is:

3.5.14

G

Promotions relating to non-business overdraft agreements

A *direct offer financial promotion* made in writing and relating to a *non-business overdraft agreement* will also need to comply with the *rules* in ■ **BCOBS 2.2B** (General information about overdrafts for personal current accounts) where those *rules* apply.

- (a) where a date on which the *customer* is entitled to require provision of the subject of a *credit agreement* is specified in or can be determined from the agreement, the earliest such date;
- (b) in any other case, the date of making the agreement.



3.6 Financial promotions about credit agreements secured on land

Application

3.6.1

R

This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending* in relation to *regulated credit agreements secured on land*; and
- (2) to a *financial promotion* in relation to *credit broking* in relation to *regulated credit agreements secured on land*;

and in both cases other than *financial promotions* to the extent that they relate to *qualifying credit*.

Definitions

3.6.2

R

In this section, for a *financial promotion* relating to *credit* to be provided under a *credit agreement* "relevant date" means:

- (1) in a case where a date is specified in or determinable under the agreement at the date of its making as that on which the *customer* is entitled to require provision of anything the subject of the agreement, the earliest such date; and
- (2) in any other case, the date of the making of the agreement.

Prohibition on financial promotion where goods etc not sold for cash

3.6.3

R

A *financial promotion* must not be *communicated* where it indicates a *firm* is willing to provide *credit* under a regulated *restricted-use credit agreement* secured on *land* relating to *goods* or services to be supplied by any *person*, when at the time the *financial promotion* is *communicated*, the *firm* or any *supplier* under such an agreement does not hold itself out as prepared to sell the *goods* or provide the services (as the case may be) for cash.

[Note: section 45 of CCA]

Content of financial promotions

3.6.4

R

- (1) Where a *financial promotion* includes any of the amounts referred to in (5) to (7) of ■ CONC 3.6.10 R the promotion must:

- (a) include all the other items of information (other than any item inapplicable to the particular case) listed in ■ CONC 3.6.10 R; and
- (b) specify a postal address at which the *person* making the promotion may be contacted, except in the case of a *financial promotion*:
 - (i) *communicated* by means of television or radio broadcast;
 - (ii) in any form on the premises of a *lender* or *dealer* (other than a *financial promotion* in writing which *customers* are intended to take away);
 - (iii) which includes the name and address of a *dealer*; or
 - (iv) which includes the name and a postal address of a *credit broker*.

[Note: regulation 4(1) of CCAR 2004]

- (2) The items of information listed in ■ CONC 3.6.10 R must be given equal prominence and must be shown together as a whole.

[Note: regulation 4(2) of CCAR 2004]

- (3) Any information in any book, catalogue, leaflet or other document which is likely to vary from time to time must be taken for the purpose of (2) to be shown together as a whole if:
 - (a) it is set out together as a whole in a separate document issued with the book, catalogue, leaflet or other document;
 - (b) the other information in the *financial promotion* is shown together as a whole in the book, catalogue, leaflet or other document; and
 - (c) the book, catalogue, leaflet or other document identifies the separate document in which the information likely to vary is set out.

[Note: regulation 4(3) of CCAR 2004]

Statements in relation to security

3.6.5

R

- (1) Where a *financial promotion* concerns a facility for which *security* is or may be required, the promotion must:
 - (a) state that *security* is or may be required; and
 - (b) specify the nature of the *security*.

[Note: regulation 7(1) of CCAR 2004]

- (2) Where, in the case of a *financial promotion*, the *security* comprises or may comprise a mortgage or charge on a property used by the *customer* as a dwelling (whether or not the *customer's* primary residence):
 - (a) except where (c) applies, the *financial promotion* must contain a warning in the form:

"YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT";

- (b) where the *financial promotion* indicates that *credit* is available for the payment of debts due to other *lenders*, the warning in (a) must be preceded by the words:

“THINK CAREFULLY BEFORE SECURING OTHER DEBTS AGAINST YOUR HOME.”

- (c) where the *credit agreement* is or would be an agreement of a kind described in (3), the *financial promotion* must contain a warning in the form:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN ANY DOUBT, SEEK INDEPENDENT ADVICE”.

[Note: regulation 7(2) of CCAR 2004]

- (3) The kinds of agreement in (2)(c) are:

- (a) any *credit agreement* under which no instalment *repayments* secured by the mortgage on the *customer's* home, and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by the *customer*), are due or capable of becoming due while the *customer* continues to occupy the mortgaged *land* as the *customer's* main residence; and
- (b) any *credit agreement*:
- (i) which is secured by a mortgage which the *lender* cannot enforce by taking possession of or selling (or concurring with any other *person* in selling) the mortgaged *land* or any part of it while the *customer* continues to occupy it as the *customer's* main residence; and
- (ii) under which, although interest payments may become due, no full or partial repayment of the *credit* secured by the mortgage is due or capable of becoming due while the *customer* continues to occupy the mortgaged *land* as the *customer's* main residence.

[Note: regulation 7(3) of CCAR 2004]

- (4) Where a *financial promotion* is for a mortgage or other loan secured on property and *repayments* are to be made in a currency other than sterling, the *financial promotion* must contain a warning in the form:

“CHANGES IN THE EXCHANGE RATE MAY INCREASE THE STERLING EQUIVALENT OF YOUR DEBT”.

[Note: regulation 7(4) of CCAR 2004]

- (5) The warnings provided for in (2) and (4):

- (a) must be given greater prominence in a *financial promotion* than is given to:
- (i) any rate of charge other than the *typical APR*; and
- (ii) any indication or incentive of a kind referred to in
■ CONC 3.6.6R (1); and

- (b) must be given no less prominence in a *financial promotion* than is given to any of the items listed in ■ CONC 3.6.10 R that appear in the *financial promotion*.

[Note: regulation 7(6) of CCAR 2004]

- (6) Paragraphs (2), (3), (4) and (5) do not apply in the case of a *financial promotion* which:

- (a) is communicated by means of television or radio broadcast in the course of programming the primary purpose of which is not financial promotion; or
- (b) is communicated by exhibition of a film (other than exhibition by television broadcast); or
- (c) contains only the name of the *firm communicating the financial promotion*.

[Note: regulation 7(8) of CCAR 2004]

Annual percentage rate of charge

3.6.6

R

- (1) A *financial promotion* must specify the *typical APR* if the promotion:

- (a) specifies any other rate of charge;
- (b) includes any of the items of information listed in ■ CONC 3.6.10R (5) to (7);
- (c) indicates in any way, whether expressly or by implication, including by means of the name given to a business or of an address used by a business for the purposes of *electronic communication*, that:
 - (i) *credit* is available to *persons* who might otherwise consider their access to *credit* restricted; or
 - (ii) any of the terms on which *credit* is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other *lender*; or
 - (iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other *lender*; or
- (d) includes any incentive (including but not limited to, gifts, special offers, discounts and rewards) to apply for *credit* or to enter into an agreement under which *credit* is provided;

[Note: regulation 8(1) of CCAR 2004]

- (e) includes an incentive (in the form of a statement about the speed or ease of, processing, considering or granting an application or of making funds available) to apply for *credit* or to enter into an agreement under which *credit* is provided.
- (2) A *financial promotion* may not indicate the range of *APRs* charged where *credit* is provided otherwise than by specifying, with equal prominence, both:

- (a) the *APR* which the *firm communicating or approving the financial promotion* reasonably expects, at the date on which the promotion is *communicated or approved*, would be the lowest *APR* at which *credit* would be provided under not less than 10% of the agreements which will be entered into as a result of that promotion; and
- (b) the *APR* which the *firm communicating or approving the financial promotion* reasonably expects, at that date, would be the highest *APR* at which *credit* would be provided under any of the agreements which will be entered into as a result of that promotion.

[Note: regulation 8(2) of *CCAR 2004*]

- (3) An *APR* must be shown as “%APR”.

[Note: regulation 8(3) of *CCAR 2004*]

- (4) Where an *APR* is subject to change it must be accompanied by the word “variable”.

[Note: regulation 8(4) of *CCAR 2004*]

- (5) The *typical APR* in a *financial promotion* must be:
 - (a) accompanied by the word “typical”;
 - (b) presented together with any of the items listed in ■ CONC 3.6.10 R that are included in the promotion;
 - (c) given greater prominence in the promotion than:
 - (i) any other rate of charge;
 - (ii) any items listed in ■ CONC 3.6.10 R; and
 - (iii) any indication or incentive of a kind referred to in (1); and
 - (d) in the case of a promotion in printed or electronic form which includes any of the items listed in ■ CONC 3.6.10 R, shown in characters at least one and a half times the size of the characters in which those items appear.

[Note: regulation 8(5) of *CCAR 2004*]

- (6) In the case of a *financial promotion* relating to a *borrower-lender agreement* enabling the *customer* to overdraw on a current account under which the *lender* is the Bank of England or an *authorised person with permission* to accept deposits, there may be substituted for the *typical APR* a reference to the statement of:
 - (a) a rate, expressed to be a rate of interest, being a rate determined as the rate of the *total charge for credit* calculated on the assumption that only interest is included in the *total charge for credit*, and
 - (b) the nature and amount of any other charge included in the *total charge for credit*.

[Note: regulation 8(6) of *CCAR 2004*]

3.6.7 **G** Whether or not a reference to speed or ease in **■ CONC 3.6.6R (1)(e)** constitutes an incentive to apply for *credit* or enter into an agreement under which *credit* is provided would depend upon the circumstances, including whether it is likely to persuade or influence a *customer* to take those steps or is merely a factual statement about the product or service.

Restricted expressions

3.6.8 **R**

(1) A *financial promotion* must not include:

- (a) the word “overdraft” or any similar expression as describing any agreement for *running-account credit*, except where the agreement enables a *customer* to overdraw on a current account;
- (b) the expression “interest free” or any similar expression indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by *credit* than he would be liable to pay as a cash purchaser for the like transaction, except where the *total amount payable* by the *customer* does not exceed the *cash price*;
- (c) the expression “no deposit” or any similar expression, except where no *advance payments* are to be made;
- (d) the expression “loan guaranteed” or “pre-approved” or “no credit checks” or any similar expression, except where the agreement is free of any conditions regarding the credit status of the *customer*;
- (e) the expression “gift”, “present” or any similar expression, except where there are no conditions which would require the *customer* to repay the *credit* or return the item that is the subject of the claim.

[Note: regulation 9 of CCAR 2004]

(2) A *financial promotion* must not include for a *repayment of credit* the expression “weekly equivalent” or any expression to like effect or any expression of any other periodical equivalent, unless weekly repayments or the other periodical payments are provided for under the agreement.

(3) In this *rule* “cash purchaser” means a *person* who for money consideration acquires *goods, land* or other things or is provided with services, under a transaction which is not financed by *credit*.

Total charge for credit and any APR: assumptions about running account credit

3.6.9 **R**

(1) In the case of a *financial promotion* about *running-account credit*, the following assumptions have effect for the purpose of calculating the *total charge for credit* and any *APR*, notwithstanding the terms of the transaction advertised and in place of any assumptions in **■ CONC App 1.1.11 R** to **■ CONC App 1.1.18 R** that might otherwise apply:

- (a) the amount of the *credit* to be provided must be taken to be £1,500 or, in a case where *credit* is to be provided subject to a *credit limit* of less than £1,500, an amount equal to that limit;
- (b) it must be assumed that the *credit* is provided for a period of one year beginning with the relevant date;

- (c) it must be assumed that the *credit* is provided in full on the relevant date;
- (d) where the rate of interest will change at a time provided in the transaction within a period of three years beginning with the relevant date, the rate must be taken to be the highest rate at any time obtaining under the transaction in that period;
- (e) where the agreement provides *credit* to finance the purchase of *goods, services, land* or other things and also provides one or more of:
 - (i) cash loans;
 - (ii) *credit* to refinance existing indebtedness of the *customer*, whether to the *lender* or another *person*; and
 - (iii) *credit* for any other purpose;and either or both different rates of interest and different charges are payable for the *credit* provided for all or some of these purposes, it must be assumed that the rate of interest and charges payable for the whole of the *credit* are those applicable to the provision of *credit* for the purchase of *goods, services, land* or other things; and
- (f) it must be assumed that the *credit* is repaid:
 - (i) in twelve equal instalments; and
 - (ii) at *monthly* intervals, beginning one *month* after the relevant date.

[Note: paragraph 1 of schedule 1 to CCAR 2004]

Total charge for credit and any APR: tolerances in disclosure of an APR

- (2) For the purposes of ■ CONC 3.6, it is sufficient compliance with the requirement to show an *APR* if there is included in the *financial promotion*:
 - (a) a rate which exceeds the *APR* by not more than one; or
 - (b) a rate which falls short of the *APR* by not more than 0.1;or in a case to which (3) or (4) applies, a rate determined in accordance with those sub-paragraphs or whichever of them applies to that case.

[Note: paragraph 2 of schedule 1 to CCAR 2004]

Total charge for credit and any APR: tolerance where repayments are nearly equal

- (3) In the case of an agreement under which all *repayments* but one are equal and that one *repayment* does not differ from any other *repayment* by more whole pence than there are *repayments* of *credit*, there may be included in a *financial promotion* about the agreement a rate found under ■ CONC App 1.1.9 R as if that one *repayment* were equal to the other *repayments* to be made under the agreement.

[Note: paragraph 3 of schedule 1 to CCAR 2004]

Total charge for credit and any APR: tolerance of interval between relevant date and first repayment

- (4) In the case of an agreement under which:
- (a) three or more *repayments* are to be made at equal intervals; and
 - (b) the interval between the relevant date and the first *repayment* is greater than the interval between the *repayments*;
- a *financial promotion* about the agreement may include a rate found under ■ CONC App 1.1.9 R as if the interval between the relevant date and the first *repayment* were shortened so as to be equal to the interval between *repayments*.

[Note: paragraph 4 of schedule 1 to CCAR 2004]

**Information that CONC 3.6.4R(1) may require to be included
in a financial promotion**

3.6.10

R

- (1) The amount of *credit* which may be provided under a *credit agreement* or an indication of one or both of the maximum amount and the minimum amount of *credit* which may be provided.

[Note: paragraph 1 of schedule 2 to CCAR 2004]

Deposit of money in an account

- (2) A statement of any requirement to place on deposit any sum of money in any account with any *person*.

[Note: paragraph 2 of schedule 2 to CCAR 2004]

Cash price

- (3) In the case of a *financial promotion* about *credit* to be provided under a *borrower-lender-supplier agreement*, where the *financial promotion* specifies *goods, services, land* or other things having a particular *cash price*, the acquisition of which from an identified *dealer* may be financed by the *credit*, the *cash price* of such *goods, services, land* or other things.

[Note: paragraph 3 of schedule 2 to CCAR 2004]

Advance payment

- (4) A statement as to whether an *advance payment* is required and, if so, the amount or minimum amount of the payment expressed as a sum of money or a percentage.

[Note: paragraph 4 of schedule 2 to CCAR 2004]

Frequency, number and amount of repayments of credit

- (5) (a) In the case of a *financial promotion* about *running-account credit*, a statement of the frequency of the *repayments* of *credit* under the transaction and of the amount of each *repayment* stating whether it is a fixed or minimum amount, or a statement indicating the manner in which the amount will be determined.

- (b) In the case of other *financial promotions*, a statement of the frequency, number and amounts of *repayments of credit*.
- (c) The amount of any *repayment* under this sub-paragraph may be expressed as a sum of money or as a specified proportion of a specified amount (including the amount outstanding from time to time).

[Note: paragraph 5 of schedule 2 to *CCAR 2004*]

Other payments and charges

- (6) (a) Subject to (b) and (c), a statement indicating the description and amount of any other payments and charges which may be payable under the agreement promoted in the *financial promotion*.
- (b) Where the liability of the *customer* to make any payment cannot be ascertained at the date the *financial promotion* is *communicated*, a statement indicating the description of the payment in question and the circumstances in which the liability to make it will arise.
- (c) Paragraphs (a) and (b) do not apply to any charge payable under the transaction to the *lender* or any other *person* on behalf of the *lender* upon failure by the *customer* or a relative of the *customer* to do or refrain from doing anything which the *customer* is required to do or refrain from doing, as the case may be.

[Note: paragraph 6 of schedule 2 to *CCAR 2004*]

Total amount payable by the customer

- (7) In the case of a *financial promotion* about *fixed-sum credit* to be provided under a *credit agreement* which is repayable at specified intervals or in specified amounts and other than cases under which the sum of the payments within (a) to (c) is not greater than the *cash price* referred to in (3), the *total amount payable*, being the total of:
 - (a) *advance payments*;
 - (b) the amount of *credit* repayable by the *customer*, and
 - (c) the amount of the *total charge for credit*.

[Note: paragraph 7 of schedule 2 to *CCAR 2004*]

3.7 Financial promotions and communications: credit brokers

Application

- 3.7.1 **R** This section applies to a *financial promotion* or a communication with a *customer* in relation to *credit broking* in relation to a *regulated credit agreement*.
- 3.7.2 **R** ■ CONC 3.7.4 G also applies to a *financial promotion* or a communication with a *customer* in relation to the activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to a *credit agreement* that would be a *regulated credit agreement* but for the *relevant provisions*.
- 3.7.2A **R** ■ CONC 3.7.5 R to ■ CONC 3.7.8 G:
- (1) apply to a *financial promotion* or a communication with a *customer* in relation to *credit broking* whether or not it is in relation to a *regulated credit agreement*; but
 - (2) do not apply to a *financial promotion* or a communication with a *customer* which clearly indicates that it is made solely in respect of *credit broking* in relation to a *credit agreement* secured by a *legal or equitable mortgage on land*.

Credit brokers' registered name, and status

- 3.7.3 **R** A *firm* must, in a *financial promotion* or a document which is intended for *individuals* which relates to its *credit broking*, indicate the extent of its powers and in particular whether it works exclusively with one or more *lenders* or works independently.

[Note: section 160A(3) of CCA]

[Note: article 21(a) of the *Consumer Credit Directive*]

- 3.7.4 **G** A *firm* should in a *financial promotion* or in a communication with a *customer*:

- (1) make clear, to the extent an average *customer* of the *firm* would understand, the nature of the service that the *firm* provides;

[Note: paragraphs 3.7e and 4.8b of CBG]

- (2) indicate to the *customer* in a prominent way the existence and nature of any financial arrangements with a *lender* that might impact upon the *firm's* impartiality in promoting or recommending a *credit* product to the *customer* or which might, if disclosed by the *firm* to the *customer*, affect the *customer's* transactional decision in relation to the *credit* product;

[Note: paragraphs 2.2, 6th bullet and 4.6 of *CBG*]

- (3) only describe itself as independent if it is able to provide access to a representative range of *credit* products from the relevant product market on competitive terms and is not constrained in providing such access, for example, because of one or more agreements with *lenders*; and

[Note: paragraph 4.5 of *CBG*]

- (4) ensure that any disclosure about the extent of its independence is prominent and in accordance with the clear, fair not misleading *rule* in ■ CONC 3.3.1 R, clear and easily comprehensible.

[Note: paragraph 4.6 of *CBG*]

3.7.4A

G

- (1) Where the amount of any commission, fee or other remuneration payable under a financial arrangement in relation to the *credit* product in ■ CONC 3.7.4G(2) that the *firm* is promoting or recommending varies due to a factor specified in the arrangement, for example a specific feature of the *credit* product or the level of work undertaken by the *firm*, the *firm* should make disclosure under ■ CONC 3.7.4G in relation to the arrangement.

- (2) Where:

- (a) the *firm* has entered into arrangements (irrespective of how many other *persons* those arrangements are with) under which it may earn commission, fees or other remuneration in relation to two or more different *credit* products;
- (b) the *customer* could be eligible for two or more of those *credit* products;
- (c) the *credit* product that the *firm* is promoting or recommending is one of those *credit* products; and
- (d) the commission, fees or other remuneration payable to the *firm* varies depending on which of the *credit* products the *customer* takes out,

the *firm* should make disclosure to the *customer* under ■ CONC 3.7.4G in relation to the arrangements.

- (3) The disclosure in (2) may be in general terms, but it should enable the *customer* reasonably to appreciate the effect of the arrangements.

3.7.5

R

A *firm* must ensure that a *financial promotion* or a communication with a *customer* specifies the legal name of the *firm* as it appears in the *Financial Services Register* and not merely a trading name.

- 3.7.6** **G** ■ CONC 3.7.5 R requires all *financial promotions* and communications with *customers* to specify the legal name of the *firm*: the *rule* does not prohibit the use of trading names, but does require the legal name to be given in addition to any trading name used. If the *firm* is a company registered under the Companies Act 2006, the *firm's* legal name will be the name by which it is registered.
- 3.7.7** **R**
- (1) A *firm* which is a *credit broker* and not a *lender* must ensure that any *financial promotion* states prominently that the *firm* is a *credit broker* and that it is not a *lender*.
 - (2) A *firm* which is both a *credit broker* and a *lender* must ensure that any *financial promotion* that solely promotes its services as a *credit broker* states prominently that the *financial promotion* is promoting the *firm's* services as a *credit broker* and not its services as a *lender*.
- 3.7.8** **G** For the purposes of ■ CONC 3.7.7 R, a statement will not be treated as prominent unless it is presented, in relation to other content of the *financial promotion*, in such a way that it is likely that the attention of the average *person* to whom the *financial promotion* is directed would be drawn to it.



3.7A Financial promotions and communications: P2P agreements

Application

3.7A.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending*.

Status

3.7A.2 **R**

- (1) A *firm* must, in any relevant communication, indicate the extent of its powers, in particular whether it works exclusively with one or more *lenders* (including, for example, if it works exclusively with *lenders* who are participants in the electronic system that the *firm* operates) or whether it works as an independent broker.
[Note: article 21(a) of the *Consumer Credit Directive*]
- (2) In this *rule*, a “relevant communication” means a *financial promotion* or a document which:
 - (a) is intended for *borrowers* or prospective *borrowers*; and
 - (b) relates to a *P2P agreement*:
 - (i) that is, or would be, a *regulated credit agreement*; and
 - (ii) in respect of which the *lender* is, or would be, acting by way of business.

3.8 Financial promotions and communications: lenders

Application

- 3.8.1 **R** This section applies to a *financial promotion* or a communication with a *customer* in relation to *consumer credit lending*.

Unfair business practices

- 3.8.2 **R** A *firm* must not in a *financial promotion* or a communication with a *customer*:
- (1) provide an application for *credit* with a pre-completed amount of credit which is not based on having carried out a *creditworthiness assessment* (see ■ CONC 5.2A); or

[Note: paragraph 5.3 of *ILG*]
 - (2) state or imply that providing *credit* is dependent solely upon the value of the equity in property on which the agreement is to be secured; or

[Note: paragraph 5.4 of *ILG*]
 - (3) promote *credit* where the *firm* knows, or has reason to believe, that the agreement would be unsuitable for that *customer* in the light of the *customer's* financial circumstances or, if known, intended use of the *credit*.

[Note: paragraph 5.5 of *ILG*]
- 3.8.3 **G** An agreement is likely to be unsuitable for the purposes of ■ CONC 3.8.2R (3) including in the following situations where a *firm*:
- (1) promotes, suggests or advises taking out a secured loan or to take out a secured loan to replace or convert an unsecured loan when it is clearly not in that *person's* best interests to do so at that time; or
 - (2) promotes, suggests or advises taking out *high-cost short-term credit* which would be expensive as a means of longer term borrowing, as being suitable for sustained borrowing over a longer period.

[Note: paragraph 5.5 (box) of *ILG*]

3.8.4

G For the purposes of **■ CONC 3.8.2R (3)** the unsuitability of an agreement does not apply to the question of whether a *customer* should enter into a *regulated credit agreement* at all.

[**Note:** paragraph 5.5 (box) of *ILG*]

3.9 Financial promotions and communications: debt counsellors and debt adjusters

Application

- 3.9.1 **R** This section applies to a *financial promotion* or a communication with a *customer* in relation to *debt counselling* and to *debt adjusting*.

Financial promotions and communications

- 3.9.2 **G**
- (1) The clear, fair and not misleading *rule* in **CONC 3.3.1 R** applies to a communication with a *customer* or the *communication* or *approval* for *communication* of a *financial promotion* in relation to *debt counselling* or *debt adjusting* and in relation to a communication with a *customer* in relation to *providing credit information services*.
 - (2) In the light of the complexity of *debt counselling*, it is unlikely that media which provide restricted space for messages would be a suitable means of making *financial promotions* about *debt solutions*.

Contents of financial promotions and communications

- 3.9.3 **R** A *firm* must ensure that a *financial promotion* or a communication with a *customer* (to the extent a previous communication to the same *customer* has not included the following information) includes:

- (1) a statement of the services the *firm* offers;
- (2) a statement of any relationship with a business associate which is relevant to the services offered in the promotion;

[Note: paragraph 2.5a of *DMG*]

- (3) a statement setting out the level of fees charged for the *firm's* services, how they are calculated, what service they cover and where it is not possible to state an exact amount, a reasonable estimate of the anticipated fees, or the average level of its fees, for the service in question;

[Note: paragraphs 2.5c and 3.18f of *DMG*]

- (4) a statement of whether any aspect of the services is provided by a third party or at extra cost;

[Note: paragraphs 2.5a and 3.18f of *DMG*]

- (5) a statement that a *customer* may be eligible under the *Financial Ombudsman Service* and referring by a link or otherwise to the information the *firm* is required to publish under ■ DISP 1.2.1R (1);

[Note: paragraph 2.5b of *DMG*]

- (6) where this is the case, a statement that the *firm's* service is profit-seeking;

[Note: paragraphs 2.5c and 3.18a of *DMG*]

- (7) where this is the case, a statement that the *firm's* service is offered in return for payment from the *customer*;

[Note: paragraphs 2.5c and 3.18a of *DMG*]

- (8) other than for a *not-for-profit debt advice body*, a reference to impartial information and to sources of assistance from *not-for-profit debt advice bodies*;

[Note: paragraph 2.5d of *DMG*]

- (9) where the *financial promotion* or communication sets out detail of how a *customer* might resolve debt problems by explaining options, the most important actual or potential advantages, disadvantages and risk of each option, including those of the *debt solution* offered by the *firm*;

[Note: paragraphs 2.5d and 3.18h of *DMG*]

- (10) a statement setting out the likely adverse effect of entering into the *debt solution* in question on the *customer's* credit rating;

[Note: paragraph 3.18g of *DMG*]

- (11) a statement setting out that evidence of entering into an individual voluntary arrangement, a debt relief order or a protected trust deed will be entered on a public register;

[Note: paragraph 3.18g of *DMG*]

- (12) where applicable, a statement setting out that a *debt solution* is only available in a particular country of the *UK*;

[Note: paragraph 3.18i of *DMG*]

- (13) where entry into a *debt solution* with the *firm* will lead to a period when payments to a *customer's* lenders or owners (in whole or in part) are not made or are retained by the *firm*, a warning of the likelihood of falling into arrears or increasing arrears and an explanation of when distributions would be made to *lenders* or *owners*;

[Note: paragraph 3.18n of *DMG*]

- (14) a statement of the risks of entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including of the following risks:

- (a) if the arrangement or deed fails, the risk of bankruptcy;
- (b) homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;
- (c) there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
- (d) the *customer's lenders or owners* may not approve the individual voluntary arrangement or the protected trust deed; and
- (e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding; and

[Note: paragraph 3.18o of *DMG*]

- (15) a statement that where another option for dealing with a *customer's* debts is available, that another option is available and may be suitable for the *customer*.

[Note: paragraph 3.18r of *DMG*]

- (16) an explanation that compensation might be available from the *compensation scheme* if there is a *shortfall* in *client money* held by the *firm* for that *customer*.

3.9.4

G

In ■ CONC 3.9.3R (8) making reference to impartial sources of information should include making *customers* aware of publications concerning dealing with creditors published by the Insolvency Service (England and Wales), the Department of Enterprise, Trade and Investment (Northern Ireland) or debt advice published by the Scottish Government.

3.9.4A

G

Firms are reminded of:

- (1) the *guidance* in ■ CONC 3.3.10G(6) to (8) in relation to *debt solutions*; and
- (2) the *rule* in ■ CONC 8.2.4R which requires *firms* to notify the *customer* that free *debt counselling, debt adjusting and providing of credit information services* is available and that the *customer* can find out more by contacting *MoneyHelper*.

3.9.5

R

A *financial promotion* or a communication with a *customer* by a *firm* must not:

- (1) falsely claim or imply that the help and debt advice is provided on a free, impartial or independent basis, where the *firm* has a profit-seeking motive;

[Note: paragraph 3.18b of *DMG*]

- (2) falsely claim or imply in any way that the *firm* is, or represents, a charitable or *not-for-profit body* or government or local government organisation;

[Note: paragraph 3.18c of *DMG*]

- (3) promote a claims management service (within the meaning of section 419A of the *Act*) as a way of managing a *customer's* debts;

[Note: paragraph 3.18k of *DMG*]

- (4) claim or imply that the *firm* can guarantee a favourable outcome in negotiations with a *lender* or *owner* concerning the *customer's* debts;

[Note: paragraph 3.18m of *DMG*]

- (5) unfairly request, suggest or direct a *customer* to call the *firm* using a premium rate telephone number.

[Note: paragraph 3.18w of *DMG*]

3.9.6 **G** An example of unfairly directing a *customer* to a premium rate telephone number may be to direct a *person* wishing to complain to such a number.

Contents of financial promotions and communications.....

3.9.6A **G** *Firms* should note the effect of the *call charges rule* in ■ GEN 7.

On-line promotion of debt solutions.....

3.9.7 **R** A *firm* must not:

- (1) unless it is a *not-for-profit debt advice body* or a *person* who will provide such services, operate a look alike website designed to attract *customers* seeking free, charitable, not-for-profit or governmental or local governmental debt advice; or

[Note: paragraph 3.20a of *DMG*]

- (2) seek to use internet search tools or search engines so as to mislead a *customer* into visiting its website when the *customer* is seeking free, charitable, not-for-profit or governmental or local governmental debt advice.

[Note: paragraph 3.20b of *DMG*]

3.10 Financial promotions not in writing

Application

3.10.1

R

This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending, credit broking, debt counselling, debt adjusting, operating an electronic system in relation to lending* in relation to prospective *borrowers* or *borrowers* under *P2P agreements*;
- (2) in relation to the communication of a *financial promotion* that is not in writing.

Promotions that are not in writing

3.10.2

R

A *firm* must not *communicate* a solicited or unsolicited *financial promotion* that is not in writing, to a *customer* outside the *firm's* premises, unless the *person communicating* it:

- (1) only does so at an appropriate time of the day; and
- (2) identifies that *person* and the *firm* represented at the outset and makes clear the purpose of the communication.

[Note: paragraphs 3.9d of *CBG* and 3.12b of *DMG*]

3.10.3

G

Firms should note that:

- (1) section 49 of the *CCA* makes it a criminal offence to canvass *borrower-lender agreements*, for example cash loans, off trade premises (within the meaning of section 48 of the *CCA*); and
- (2) section 154 of the *CCA* makes it a criminal offence to canvass off trade premises *credit broking* of a kind specified by article 36A(1)(a) to (c) of the *Regulated Activities Order, debt adjusting, debt counselling* or *providing credit information services* (within the meaning of section 153 of the *CCA*).
- (3) The *FCA* takes the view that sections 48 and 49 of the *CCA* mean that any discussions about new borrowing or refinancing with a *customer* that take place in the *borrower's* home must be initiated by the *borrower*, either in the form of a specific written request or, only where the *individual* is in the *borrower's* home other than for the purpose of engaging in such discussion, in the form of an oral invitation.

- (4) The FCA has considered the potential for the use of “umbrella requests to visit”. “Umbrella requests” or “permissions to call” tend to be signed by a *borrower* when entering into a *borrower-lender agreement* (or shortly after) and purport to allow the *lender* to visit the *borrower’s* home to discuss other borrowing at any time, over the duration of the agreement or beyond. The FCA takes the view that such “umbrella requests” do not meet the requirements of the CCA. “Umbrella requests” create open-ended opportunities for *firms* to raise the prospect of additional borrowing, without the *borrower* having specifically requested or even considered it.
- (5) A valid request is one made on the instigation of the *borrower* when the *borrower* wants to discuss a *borrower-lender agreement*. The FCA would expect to see the following for a *firm* to comply with sections 48 and 49 of the CCA:
 - (a) the request should be a positive act by the *borrower* taken specifically for the purpose of discussing other borrowing;
 - (b) the visit should be made in response to that request. Where a request is reasonably specific on timing, the visit should be within that timing. Where the request is not reasonably specific on timing, any visit should take place within a reasonable proximity to that request for it to be clear that the visit is being made in response to that request; and
 - (c) there should be a separate request made for each agreement or contractual variation.
- (6) In the FCA’s view this would not stop an agent or representative of a *firm* who has called on a *borrower* with the sole purpose of collecting on an existing loan from discussing new or additional borrowing if the *borrower* asks them to do so during the collection visit. However, if the agent or representative raised the topic of new or additional finance, we consider it would be very difficult for them to establish that they had not visited with that purpose.
- (7) We expect that *firms* should be able to rely on their existing procedures for receiving written requests from new *customers* in relation to existing *borrowers*.

Failure to comply.....

3.10.4

G

Failure to comply with section 49 of the CCA is a criminal offence. Only a court can determine the meaning of sections 48 and 49 of the CCA.



3.11 Not approving certain financial promotions

3.11.1 **R** This section applies to a *financial promotion* in relation to a *credit agreement, credit broking, debt counselling, debt adjusting and operating an electronic system in relation to lending* in relation to prospective borrowers or borrowers under P2P agreements.

Requirement not to approve certain financial promotions.....

3.11.2 **R** A firm must not approve a *financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

3.11.3 **G** ■ CONC 3.11.2 R does not prevent the communication by a *firm* itself (i.e. a firm with a permission) of a *financial promotion*. A firm's approval of a *financial promotion* concerns approval for the communication of the promotion by an *unauthorised person* which is prevented by ■ CONC 3.11.2 R.

Chapter 4

Pre-contractual requirements

4.1 Content of quotations

Application

4.1.1

R

This section, apart from ■ CONC 4.1.4 R, applies to:

- (1) a *firm* with respect to *consumer credit lending*; or
- (2) a *firm* with respect to *consumer hiring*;

including where the *firm* provides a quotation acting on behalf of a *customer*.

4.1.2

R

■ CONC 4.1.4 R applies to a *firm* with respect to *credit broking*, including where the *firm* provides a quotation acting on behalf of a *customer*.

Lenders and owners: contents of quotation for certain agreements

4.1.3

R

- (1) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.

[Note: regulation 3a of SI 1999/2725]

- (2) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home under which, while C continues to occupy the home as C's main residence and either:
 - (a) no instalment *repayments* of the *credit* secured by a mortgage on C's home and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by C), are due or capable of becoming due; or
 - (b) the *lender* cannot enforce the *credit agreement* by taking possession of or selling (or concurring with any other *person* in selling) the home or any part of it while C continues to occupy it as C's main residence; and
 - (c) where (b) applies, although interest payments may become due, no full or partial *repayment* of the *credit* secured by a mortgage is due or capable of becoming due.

[Note: regulation 3B of SI 1999/2725]

the *firm* must include (or cause to be included) in the quotation the following statement:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE.”

[Note: regulation 3A of SI 1999/2725]

- (3) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C’s home, other than an agreement to which (2) applies, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT.”

[Note: regulation 3b of SI 1999/2725]

- (4) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would or might be secured on *land* and under which *repayments* would be made in a currency other than sterling, the *firm* must include (or cause to be included) in the quotation the following statement:

“THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT.”

[Note: regulation 4 of SI 1999/2725]

- (5) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer’s* home, the *firm* must include (or cause to be included) in the quotation a statement that such security would or might be required.

[Note: regulation 5a of SI 1999/2725]

- (6) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer’s* home, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”

[Note: regulation 5b of SI 1999/2725]

Credit brokers: contents of quotation for certain agreements

4.1.4



- (1) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would or might be secured on the *customer’s* home, the *firm* must include (or cause to be included)

in the quotation a statement that such *security* would or might be required.

[Note: regulation 6 of SI 1999/2725]

- (2) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home under which, while C continues to occupy the home as C's main residence and either:
- (a) no instalment *repayments* of the *credit* secured by a mortgage on C's home and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by C), are due or capable of becoming due; or
 - (b) the *lender* cannot enforce the *credit agreement* by taking possession of or selling (or concurring with any other *person* in selling) the home or any part of it while C continues to occupy it as C's main residence; and
 - (c) where (b) applies, although interest payments may become due, no full or partial *repayment* of the *credit* secured by a mortgage is due or capable of becoming due;

the *firm* must include (or cause to be included) in the quotation the following statement:

"CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE."

- (3) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home, other than an agreement to which (2) applies, the *firm* must include (or cause to be included) in the quotation the following statement:

"YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT."

- (4) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would be secured on *land* and under which *repayments* would be made in a currency other than sterling, the *firm* must include (or cause to be included) in the quotation the following statement:

"THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT."

- (5) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.

- (6) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”

Interpretation: quotations

4.1.5

R

- (1) Paragraphs (2) to (5) apply to ■ CONC 4.1.3 R and ■ CONC 4.1.4 R (rules on content of quotations).
- (2) “Quotation” means any document by which a *person* gives a *customer* information about the terms on which the *person* or a *lender* or *owner* is prepared to do business, but it does not include:
 - (a) a communication which is also a *financial promotion*;
 - (b) any document given to a *customer* under section 58 of the CCA (opportunity for withdrawal from prospective land mortgage);
 - (c) any document sent to a *customer* for signature which embodies the terms or such of them as it is intended to reduce to writing of a *credit agreement* or a *consumer hire agreement*; or
 - (d) any copy of an unexecuted agreement delivered or sent to a *customer* under section 62 of the CCA (duty to supply copy of unexecuted agreement).
- (3) Where the words of a statement which must be included in a quotation are specified, the statement must be:
 - (a) in capital letters;
 - (b) clear and legible; and
 - (c) prominent.
- (4) Providing a quotation includes making a quotation available temporarily.
- (5) In these *rules* as they apply to Scotland:
 - (a) any reference to bailment is a reference to hiring; and
 - (b) any reference to a mortgage or a charge on *land* is a reference to a standard security over *land* within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970.

4.1.6

G

For the purposes of ■ CONC 4.1.5R(3)(c), a statement included in a quotation will not be treated as prominent unless it is presented, in relation to the other content of the quotation, in such a way that it is likely that the attention of the average *customer* to whom such a quotation is addressed would be drawn to it.

4.2 Pre-contract disclosure and adequate explanations

Application

4.2.1

R

This section, unless otherwise stated in or in relation to a *rule*:

- (1) applies to a *firm* with respect to *consumer credit lending*;
- (2) applies to a *firm* with respect to *credit broking* where the *firm* has or takes on responsibility for providing the disclosures and explanations to *customers* required by this section;
- (3) does not apply to an agreement under which the *lender* provides the *customer* with *credit* which exceeds £60,260, unless the agreement is a *residential renovation agreement*;
- (4) does not apply to an agreement secured on *land*; and
- (5) does not apply to a *borrower-lender agreement* enabling the *customer* to overdraw on a current account other than such an agreement which would be an *authorised non-business overdraft agreement*, but for the fact that the *credit* is not repayable on demand or within three *months*.

[Note: section 74(1D) of CCA]

4.2.2

G

For the agreements referred to in **■** CONC 4.2.1R (3), **■** (4) and **■** (5), a *firm* within **■** CONC 4.2.1R (1) or **■** CONC 4.2.1R (2) should consider whether it is necessary or appropriate to provide explanations of the matters in **■** CONC 4.2.5R (2); in particular, a *firm* should consider highlighting the principal consequences to the *customer* including the consequences of missing payments or under-paying, including, where applicable, the risk of repossession of the *customer's* property.

[Note: section 55A(6) of CCA and paragraphs 3.1(box) of ILG]

Other disclosure requirements

4.2.3

G

- (1) The *disclosure regulations* made under section 55 of the CCA which require information to be disclosed before a *regulated credit agreement* is made remain in force.
- (2) Failure to comply with the *disclosure regulations* has the effect that agreements are enforceable against a borrower or hirer (as defined in the CCA) only with an order of court and enforcement for that

purpose includes a retaking of goods or *land* to which the agreement relates.

- (3) Other relevant disclosure requirements are found in ■ CONC 2.7 (distance marketing) and ■ CONC 2.8 (electronic commerce), the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095), the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) and the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) and the Cancellation of Contracts made in the Consumer's home etc Regulations 2008 (SI 2008/1816).

4.2.4

G The pre-contractual information disclosed under the *disclosure regulations* and the pre-contractual explanations required under ■ CONC 4.2.5 R should take into account any preferences expressed, or information provided by, the *customer* where the *firm* would in principle agree to offer *credit* on such terms

[Note: paragraph 3.13 (box) of *ILG*]

Pre-contractual adequate explanations

4.2.5

- R**
- (1) Before making a *regulated credit agreement* the *firm* must:
- (a) provide the *customer* with an adequate explanation of the matters referred to in (2) in order to place the *customer* in a position to assess whether the agreement is adapted to the *customer's* needs and financial situation;
 - (b) advise the *customer*:
 - (i) to consider the information which is required to be disclosed under section 55 of the *CCA*; and
 - (ii) where the information is disclosed in person, that the *customer* is able to take it away;
 - (c) provide the *customer* with an opportunity to ask questions about the agreement; and
 - (d) advise the *customer* how to ask the *firm* for further information and explanation.
- [Note: section 55A(1) of *CCA*]
- (2) The matters referred to in (1)(a) are:
- (a) the features of the agreement which may make the *credit* to be provided under the agreement unsuitable for particular types of use;
 - (b) how much the *customer* will have to pay periodically and, where the amount can be determined, in total under the agreement;
 - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the *customer* in a way which the *customer* is unlikely to foresee;
 - (d) the principal consequences for the *customer* arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon

the type and amount of *credit* and the circumstances of the *customer*:

- (i) the total cost of the debt growing;
 - (ii) incurring any default charges or interest for late or missed payment or under-payment;
 - (iii) impaired credit rating and its effect on future access to or cost of *credit*;
 - (iv) legal proceedings, including reference to charging orders (or, in Scotland, inhibitions), and to the associated costs of such proceedings;
 - (v) repossession of the *customer's* home or other property; and
 - (vi) where an article is taken in *pawn*, that the article might be sold, if not redeemed; and
- (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.

[Note: section 55A(2) of CCA and paragraph 3.13 of ILG]

- (3) The adequate explanation and advice in (1) may be given orally or in writing, except where (4) or (4A) applies.

[Note: section 55A(3) of CCA]

- (4) Where the matters in (2)(a), (b) or (e) are given orally or to the *customer* in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the *customer*.

[Note: section 55A(4) of CCA]

- (4A) The explanation of the matters in ■ CONC 4.2.15R(3A) must be given to the *customer* both orally and in a *durable medium*.

- (5) Paragraphs (1) to (4A) do not apply to a *lender* if a *credit broker* has complied with those sub-paragraphs in respect of the agreement.

[Note: section 55A(5) of CCA]

- (6) Where the *regulated credit agreement* is an agreement under which a *person* takes an article in *pawn*:

- (a) the requirement in (1)(a) only relates to the matters in (2)(d) and (e); and
- (b) the requirements in (1)(b) and (d) do not apply.

[Note: section 55A(7) of CCA]

- (7) This *rule* does not apply to:

- (a) a *non-commercial agreement*;
- (b) a *small borrower-lender-supplier agreement* for restricted-use credit

[Note: section 74(1) of CCA]

- (8) [deleted]

(9) [deleted]

[Note: article 5(6) of the *Consumer Credit Directive*]

4.2.6

G

The explanation provided by a *lender* or a *credit broker* under ■ CONC 4.2.5 R should enable the *customer* to make a reasonable assessment as to whether the *customer* can afford the *credit* and to understand the key associated risks.

[Note: paragraph 3.3 (box) of *ILG*]

4.2.7

G

In deciding on the level and extent of explanation required by ■ CONC 4.2.5 R, the *lender* or *credit broker* should consider (and each of them should ensure that anyone acting on its behalf should consider), to the extent appropriate to do so, factors including:

- (1) the type of *credit* being sought;
- (2) the amount and duration of *credit* to be provided;
 - the actual and potential costs of the *credit*;
- (2B) the risk to the *customer* arising from the *credit* (the risk to the *customer* is likely to be greater the higher the total cost of the *credit* relative to the *customer's* financial situation);
- (2C) the purpose of the *credit*, if the *lender* or (as the case may be) the *credit broker* knows what that purpose is;
- (3) to the extent it is evident and discernible, the *customer's* level of understanding of the agreement, and of the information and the explanation provided about the agreement; and
- (4) the channel or medium through which the *credit* transaction takes place.

[Note: paragraph 3.4 of *ILG*]

4.2.7A

G

- (1) ■ CONC 4.2.5R(1) requires the *customer* to be provided with an adequate explanation of the matters in ■ CONC 4.2.5R(2). Where there is more than one *customer* acting together as 'joint borrowers', the *lender* or *credit broker* should consider whether it may be appropriate to give separate explanations to each *customer* and whether the explanation should be the same or different for each, rather than giving a single explanation to all of them jointly. (Where the *borrower* is a *partnership* or an unincorporated association, the members or *partners* may be treated as a single *customer*.)
- (2) In deciding whether it is appropriate to give separate explanations to each *customer*, and in determining the level and extent of explanation required for each *customer*, the *lender* or *credit broker* should consider the factors in ■ CONC 4.2.7G separately for each *customer*.

(3) However, ■ CONC 4.2.5R(4) does not require an oral explanation of the matters in ■ CONC 4.2.5R(2)(c) and (d) to be given to one *customer* simply because an oral explanation of the matters in ■ CONC 4.2.5R(2)(a), (b) or (e) was given to a different *customer*.

4.2.8 **R** Where the *regulated credit agreement* is *high-cost short-term credit*, the *lender* or a *credit broker* must explain under ■ CONC 4.2.5R (1)(a) that entering into that agreement would be unsuitable to support sustained borrowing over long periods and would be expensive as a means of longer term borrowing.

[Note: paragraph 3.13 (box) of *ILG*]

4.2.9 **R** Even where a *customer* states or implies that there is no need for an explanation of the *regulated credit agreement*, the *lender* or *credit broker* must continue to comply with ■ CONC 4.2.5 R.

[Note: paragraph 3.10 of *ILG*]

4.2.10 **R** A *lender* or a *credit broker* must not encourage or induce a *customer* to waive the rights in ■ CONC 4.2.5 R.

[Note: paragraph 3.10 of *ILG*]

4.2.11 **R** Before a *lender* concludes that ■ CONC 4.2.5R (1) to ■ CONC 4.2.5R(4A) do not apply to it in relation to a *regulated credit agreement* by virtue of ■ CONC 4.2.5R (5), the *lender* must take reasonable steps to satisfy itself that an explanation of that agreement complying with ■ CONC 4.2.5 R has been provided to the *customer* by the *credit broker*.

[Note: paragraph 3.11 (box) of *ILG*]

4.2.12 **R** The *lender* or the *credit broker* must enable a *customer* to request and obtain further information and explanation about a *regulated credit agreement* without incurring undue cost or delay.

[Note: paragraph 3.16 (box) of *ILG*]

4.2.13 **R** Neither a *lender* nor a *credit broker* may require a *customer* to acknowledge that the information and explanations it has provided are adequate to satisfy the requirements of **CONC 4.2.5 R**.

[Note: paragraph 3.30 (box) of *ILG*]

4.2.14 **G** A *lender* or *credit broker* may require an acknowledgement that it has provided an explanation, and of receipt of any written information that forms a part of the explanation, but not an acknowledgement as to its adequacy. **CONC 4.2.13 R** does not prevent the *lender* or *credit broker* asking if the *customer* has understood an explanation given.

[Note: paragraph 3.30 (box) of *ILG*]

Adequate explanations in relation to particular regulated credit agreements

4.2.15 **R** The following information must be provided by the *lender* or a *credit broker* as part of, and in addition to that provided under, the adequate explanation required by **CONC 4.2.5 R**, where applicable, in the specified cases:

- (1) for *credit token agreements*:
 - (a) different rates of interest and different charges apply to different elements of the *credit* provided (for example, a higher cost of withdrawing cash);
 - (b) the implications of only making minimum *repayments*;
 - (c) interest rates or charges may be increased;
 - (d) where applicable, the interest rates may be increased based on the risks presented by the individual *customer*;
 - (e) except in relation to *retail revolving credit* and *BNPL agreements*, the limitations on any zero percentage or low interest or other introductory offer; and
 - (f) conditions on any balance transfers, including any fees and charges which may apply;
- (2) for *credit card cheques*, the higher associated costs relative to payment by credit card;
- (3) for *home credit loan agreements* and *high-cost short-term credit*, the effect of refinancing (within the meaning in **CONC 6.7.17 R**) or otherwise extending the duration of the *credit* or of the *credit agreement*;
- (3A) for a *home credit loan agreement* that would refinance an existing *home credit loan agreement* and also involve an increase in the amount of principal outstanding, and where an alternative option

could be entering into a separate *home credit loan agreement* with the *lender* for the amount of the additional principal, the information must include an explanation of the difference, if any, between the weekly amount payable and the *total amount repayable* for a refinanced loan as compared to the situation where the *borrower* enters into a separate, concurrent loan. If the regular period after which the next payment is due is not weekly but a different period, then the *lender* must refer to that other period.

- (4) for *bill of sale loan agreements*:
 - (a) the risk of losing the asset which is the subject of the bill of sale and the loss this could entail;
 - (b) that repossession can take place without a court order;
 - (c) that repossession may not clear the debt owed; and
 - (d) unlike in the case of *hire-purchase agreements* and *conditional sale agreements*, the *customer* is not protected under this arrangement from repossession of the asset where one third or more of the *total amount payable* has been paid off;
- (5) for *hire purchase agreements* and *conditional sale agreements*:
 - (a) the *customer* does not own the *goods* until the sums required under the agreements have been paid, including any option to purchase fee and any other conditions have been satisfied;
 - (b) *goods* can be repossessed without a court order in the event of default, unless in relation to a *regulated credit agreement* the *customer* has paid a third or more of the *total amount payable*;
- (6) for a *credit agreement* which is used to consolidate existing debts of the *customer* (whether to the same *lender* or to another *person*) and where applicable in each case:
 - (a) the effect of consolidating the debts will involve payment of a higher rate of interest or charges or both (if the relevant information about existing debts is known to the *lender* or *credit broker*);
 - (b) the effect of consolidating the debts will involve increasing the period required for repayment (if the relevant information about existing debts is known to the *lender* or *credit broker*); and
 - (c) the *credit agreement* would be secured on the *customer's* property;
- (7) for a *credit agreement* which includes a condition requiring a guarantor, the requirement for the *customer* to provide *security* in the form of a guarantee.
- (8) for *retail revolving credit* and *BNPL agreements*, the limitations that apply to any zero percentage or low interest, introductory or other promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of that interest or those charges and the amount of principal on which the interest would be charged. If, for example, failing to meet the conditions for the application of the offer would result in interest being charged at a higher rate, or from

the date of the purchase of the *goods* or services or on the total purchase price of the *goods* or services without account being taken of *repayments* made during the offer period, this must be included in the adequate explanation.

[Note: paragraph 4.26c of *CBG*]

[Note: paragraph 3.13 of *ILG*]

4.2.16

G

(1) Where a *customer* does not have a good understanding of the English language, the *lender* or *credit broker* may need to consider alternative methods of providing relevant information concerning the explanation required by ■ CONC 4.2.5 R in order for the *customer* to make an informed decision, such as, providing the information to a person with such understanding who can assist the *customer*, for example, a friend or relative.

[Note: paragraph 3.4 (box) of *ILG*]

(2) The explanation in ■ CONC 4.2.15R(3A) should enable a *customer* to easily understand the different costs of refinancing as opposed to keeping the existing loan and taking out an additional concurrent loan, for example by indicating whether the periodic instalments and/or the total amounts payable are higher or lower.

Guidance for adequate explanations where agreements are marketed by distance or electronic means

4.2.17

G

Since the use of distance means of communication (such as the internet) by their nature limit the *lender's* or *credit broker's* ability to ascertain the *customer's* level of understanding of explanations provided, a *lender* or *credit broker* using those means may, for example, wish to provide local rate telephone number for *customers* who wish to seek further explanation.

[Note: paragraph 3.6 (box) of *ILG*]

4.2.18

G

Interaction is an important part of compliance with the requirement in ■ CONC 4.2.5R (1), for example, where the agreement is marketed and concluded by *electronic means*. For an online application, the requirement in ■ CONC 4.2.5R (1)(c) (the right to ask questions) may be complied with by the *customer* being able to access an appropriately comprehensive set of answers to frequently asked questions about the agreement or by being able to speak to a representative of the online provider.

[Note: paragraph 3.8 (box) of *ILG*]

4.2.19

G

For a *regulated credit agreement* marketed and concluded by *electronic means* to comply with ■ CONC 4.2.5 R the *customer* should pass through screens containing the required information and explanations, giving the *customer* the opportunity to see and read the explanations provided. Merely providing a link to where such information can be found is unlikely to satisfy the requirements in ■ CONC 4.2.5 R, where the agreement can be concluded without accessing the link.

[Note: paragraph 3.15 (box) of *ILG*]

4.2.20 **G** For telephone or face-to-face transactions, interaction between the *customer* and the *firm's* representative is also important. It should be made clear to the *customer* that the *customer* can ask questions or request further information or explanation and, for example, the representative solely providing the *customer* with a written explanation of an agreement, or relying solely on a written script in relation to an agreement, is unlikely to comply with the requirement in ■ CONC 4.2.5 R.

[Note: paragraph 3.9 (box) of *ILG*]

4.2.21 **G** Where a *regulated credit agreement* is a modifying agreement under section 82(2) of the *CCA*, the requirements in ■ CONC 4.2 apply before the agreement is made.

[Note: paragraph 3.12 of *ILG*]

Credit agreements where there is a guarantor etc

4.2.22 **R**

- (1) This *rule* applies if:
 - (a) a *firm* is to enter into a *regulated credit agreement*; and
 - (b) an *individual* other than the *borrower* (in this *rule* referred to as "the guarantor") is to provide a guarantee or an indemnity (or both) in relation to the *regulated credit agreement*.
- (2) The *firm* must, before making the *regulated credit agreement*, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed decision as to whether to act as the guarantor in relation to the *regulated credit agreement*.
- (3) The matters are:
 - (a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and
 - (b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.
- (4) For the purposes of (2), the *rules* and *guidance* listed in (5) apply as if:
 - (a) references to the *customer* were references to the guarantor; and
 - (b) references to ■ CONC 4.2.5R were references to this *rule*.
- (5) The *rules* and *guidance* are:
 - (a) ■ CONC 4.2.6G to ■ CONC 4.2.7AG;
 - (b) ■ CONC 4.2.9R and ■ CONC 4.2.10R;
 - (c) ■ CONC 4.2.12R to ■ CONC 4.2.14G; and
 - (d) ■ CONC 4.2.16G to ■ CONC 4.2.21G.
- (6) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

4.2.23

R

- (1) ■ CONC 4.2.22R does not apply to a *lender* if a *credit broker*, a solicitor, a barrister, (in Scotland) an advocate, or a relevant person has complied with that *rule* in respect of the agreement.
- (2) Before a *lender* concludes that ■ CONC 4.2.22R does not apply to it in relation to a *regulated credit agreement* by virtue of (1), the *lender* must take reasonable steps to satisfy itself that:
 - (a) an explanation complying with ■ CONC 4.2.22R(2) has been provided to the guarantor; and
 - (b) the following had been provided to the *person* giving the explanation, before the explanation was given:
 - (i) a copy of the agreement;
 - (ii) if the guarantee or the indemnity (or both) is contained in a document other than the agreement, a copy of that document; and
 - (iii) a copy of any other document or information in writing relating to the agreement which had been provided to the guarantor by the *lender* or the *credit broker*.
- (3) In this *rule*, “relevant person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), and is not a solicitor, a barrister or (in Scotland) an advocate.

4.2.24

G

■ CONC 4.2.23R permits the explanation required by ■ CONC 4.2.22R to be given by a *credit broker*. It also permits the explanation to be given by a solicitor, a barrister, a Scottish advocate or another “relevant person” (for example, in the course of giving independent legal advice to the guarantor). The explanation may only be given by such a *person* if the information and documents listed in that *rule* had been provided to that *person*.

4.3 Pre-contractual requirements and adequate explanations: P2P agreements

Application

4.3.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending*.

4.3.2 **R** This section (apart from **CONC 4.3.6 R**) does not apply to:

- (1) an agreement under which the *lender* provides the prospective *borrower* with *credit* which exceeds £60,260, unless the agreement is a *residential renovation agreement*; or
- (2) an agreement secured on *land*.

4.3.3 **G** For the agreements referred to in **CONC 4.3.2 R**, a *firm* should consider whether it is necessary or appropriate to provide explanations of the matters in **CONC 4.5.3R (2)**, in particular, a *firm* should consider highlighting key risks to the *borrower* including the consequences of missing payments or under-paying, including, where applicable, the risk of repossession of the *borrower's* property.

[**Note:** section 55A(6) of CCA and paragraph 3.1 of ILG]

[**Note:** Until the end of 30 September 2014, transitional provisions apply to **CONC 4.3.3 G**: see **CONC TP 4.1**]

Pre-contractual requirements

4.3.3A **R**

- (1) This *rule* applies if the *lender*, or the prospective *lender*, under a *P2P agreement* is, or would be, carrying on by way of business the *regulated activity* of *entering into a regulated credit agreement as lender* by entering into the agreement.
- (2) Any fee to be paid by the *borrower* to the *operator of an electronic system in relation to lending* must be agreed between the *borrower* and the *operator*, and that agreement must be recorded in writing or other *durable medium* before the *P2P agreement* is entered into.
- (3) The *operator of an electronic system in relation to lending* must disclose to the *lender* the fee, if any, for its activity payable by the

borrower for the purpose of enabling the lender to calculate the annual percentage rate of charge for the P2P agreement.

[Note: article 21(b) and (c) of the *Consumer Credit Directive*]

Adequate explanations

4.3.4

R

- (1) Before a *P2P agreement* is made, the *firm* must:
 - (a) provide the prospective *borrower* with an adequate explanation of the matters referred to in (2) in order to place the *borrower* in a position to assess whether the agreement is adapted to the *borrower's* needs and financial situation;
 - (b) where the *P2P agreement* is not a *non-commercial agreement*, advise the prospective *borrower*:
 - (i) to consider the information which is required to be disclosed under section 55(1) of the *CCA*; and
 - (ii) where the information is disclosed in person, that the *borrower* is able to take it away;
 - (c) provide the prospective *borrower* with an opportunity to ask questions about the agreement; and
 - (d) advise the prospective *borrower* how to ask the *firm* for further information and explanation.
- (2) The matters referred to in (1)(a) are:
 - (a) the features of the agreement which may make the *credit* to be provided under the agreement unsuitable for particular types of use;
 - (b) how much the *borrower* will have to pay periodically and, where the amount can be determined, in total under the agreement;
 - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the *borrower* in a way which the prospective *borrower* is unlikely to foresee;
 - (d) the principal consequences for the *borrower* arising from a failure to make payments under the agreement at the times required by the agreement, including legal proceedings and, where this is a possibility, repossession of the *borrower's* home; and
 - (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.
- (3) Except where (4) applies, the adequate explanation and advice in (1) may be given orally or in writing.
- (4) Where the matters in (2)(a), (b) or (e) are given orally or to the prospective *borrower* in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the *borrower*.
- (5) Where this *rule* applies to a *borrower-lender agreement* to finance the making of payments arising on or connected with the death of a person, this *rule* applies to the agreement to the extent the payments are:

- (a) inheritance tax chargeable in the *UK* on the death of any person;
- (b) fees payable to a court:
 - (i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;
 - (ii) in Scotland, in connection with a grant of confirmation; and
 - (iii) in the *UK*, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and
- (c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.

[Note: section 74(1F) of CCA and SI 1983/1554]

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 4.3.4 R: see ■ CONC TP 4.1]

4.3.5 **R** Where ■ CONC 4.3.4 R applies to a *firm*, the *firm* must comply with the *rules*, and observe the *guidance*, in ■ CONC 4.2 to the same extent as if it were the *lender* under an agreement to which those *rules* apply.

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 4.3.5 R: see ■ CONC TP 4.1]

4.3.6 **R** Before a *P2P agreement* which is secured on the *borrower's* home is made, a *firm* must in a prominent way give the following warning:

“YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT”

4.3.7 **G** For the purposes of ■ CONC 4.3.6R, a warning will not be treated as prominent unless it is presented in such a way that it is likely that the attention of the average *customer* would be drawn to it.

P2P agreements where there is a guarantor etc

4.3.8 **R**

- (1) This *rule* applies if:
 - (a) a *firm* with *permission* to carry on the activity of *operating an electronic system in relation to lending* is to facilitate the entry into a *P2P agreement*;
 - (b) the prospective *borrower* is an *individual*; and
 - (c) an *individual* other than the *borrower* (in this *rule* referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both) in relation to the *P2P agreement*.
- (2) The *firm* must, before the *P2P agreement* is made, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed

decision as to whether to act as the guarantor in relation to the *P2P agreement*.

- (3) The matters are:
 - (a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and
 - (b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.
- (4) For the purposes of (2), the *rules* and *guidance* listed in (5) apply as if:
 - (a) references to the *customer* were references to the guarantor;
 - (b) references to ■ CONC 4.2.5R were references to this *rule*; and
 - (c) references to the *regulated credit agreement* were references to the *P2P agreement*.
- (5) The *rules* and *guidance* are:
 - (a) ■ CONC 4.2.6G to ■ CONC 4.2.7AG;
 - (b) ■ CONC 4.2.9R and ■ CONC 4.2.10R;
 - (c) ■ CONC 4.2.12R to ■ CONC 4.2.14G; and
 - (d) ■ CONC 4.2.16G to ■ CONC 4.2.21G.
- (6) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

4.4 Pre-contractual requirements: credit brokers

Application

4.4.1 **R** This section applies to a *firm* carrying on *credit broking* in relation to a *regulated credit agreement*.

4.4.1A **R** ■ CONC 4.4.3 R applies to a *firm* carrying on *credit broking* whether or not it is in relation to a *regulated credit agreement*.

Pre-contractual requirements

4.4.2 **R** (1) A *firm* must disclose to the *customer* the fee, if any, payable by a *customer* to the *firm* for its services.

[Note: section 160A(4) of CCA]

(2) Any fee to be paid by the *customer* to the *firm* must be agreed between the *customer* and the *firm*, and that agreement must be recorded in writing or other *durable medium* before a *regulated credit agreement* is entered into.

[Note: section 160A(4) of CCA]

(3) A *firm* must disclose to the *lender* the fee, if any, for its activity payable by the *customer* for the purpose of enabling the *lender* to calculate the *annual percentage rate of charge* for the *credit agreement*.

[Note: section 160A(5) of CCA]

(4) A *firm* must disclose to the *customer* how and when any fee for its service is payable and in what circumstances a refund may be payable, including how and when a refund is available under section 155 of the CCA.

[Note: paragraphs 2.2 and 4.17b of CBG]

[Note: article 21(b) and (c) of the *Consumer Credit Directive*]

Credit broking information notice

4.4.3

R

- (1) A *firm* must not:
- (a) request, claim, demand, initiate or take payment of a charge from a *customer*, or from the *customer's* payment account, in connection with services it has provided or is to provide; or
 - (b) if the purpose, or one of the purposes, is to collect such a charge from a *customer*, invite or induce a *customer* to provide information in relation to a payment card or instrument that would enable a payment from the *customer's* payment account to be initiated by or through the *firm* or a third party or facilitate the provision of that information by a *customer*;
- unless that *firm* has met the conditions in both (2) and (3) in respect of that charge.
- (2) The first condition referred to in (1) is that the *firm* has sent a notice on paper or in another *durable medium* to the *customer* setting out the following clearly, concisely and in plain language (in this *rule* and ■ CONC 4.4.5 G referred to as the "information notice"):
- (a) the legal name of the *firm* as it appears in the *Financial Services Register*;
 - (b) if the *firm* is not a *lender*, a statement that the *firm* is a *credit broker* and that it is not a *lender*;
 - (c) if the *firm* is also a *lender*, a statement that the *firm* is acting as a *credit broker* and that it is not acting as a *lender*;
 - (d) a statement that the *customer* will be required, or (where relevant) may be required, to pay a charge in connection with the *firm's* services;
 - (e) the amount of the charge, or, where that amount is not ascertainable at the time the notice is sent, the basis on which it will be calculated; and
 - (f) when and by what method the *firm* will initiate or take payment of the charge.
- (3) The second condition referred to in (1) is that the *firm* has received from the *customer* a reply to the information notice (in this *rule* and ■ CONC 4.4.5 G referred to as the "customer confirmation") on paper or in another *durable medium* in which the *customer* acknowledges receipt of the information notice and confirms that he is aware of its contents.
- (4) The information notice may also contain the *firm's* trading name, address and other contact details but must not contain any other statements or information additional to those required by (2).
- (5) For the purposes of this *rule*:
- (a) references to "charge" include any fee, charge or financial consideration however described;
 - (b) it is immaterial whether the charge is payable to the *firm* or to a third party.
- (6) The *firm* must keep a record of:

4.4.4

R

■ CONC 4.4.3 R does not apply where:

- (a) each information notice; and
- (b) each customer confirmation.

- (1) the *customer* indicates to the *firm* that he wishes to enter into a *credit agreement* secured by a *legal or equitable mortgage on land*;
- (2) the *firm* makes it clear to the *customer* that it is willing to carry on *credit broking* for that *customer* only in relation to *credit agreements* secured by a *legal or equitable mortgage on land*; and
- (3) the *firm* does not indicate (by express words or otherwise) that it is willing to carry on *credit broking* for that *customer* in relation to *credit agreements* other than *credit agreements* secured by a *legal or equitable mortgage on land*.

4.4.5

G

- (1) ■ CONC 4.4.3 R prohibits a *firm* from asking a *customer* for any payment details, including the card number and security code of a debit card or a credit card, or using those payment details, without first sending an information notice to the *customer* and receiving a customer confirmation.
- (2) ■ CONC 4.4.3 R applies in respect of any sum due from a *customer*, however it is described and irrespective of whether it is payable to the *firm* or a third party (for example, a *firm* cannot avoid the application of this *rule* by describing a charge as a “membership fee” or a “web registration fee”). The fact that a fee or charge may be financed by *credit* does not take the fee or charge outside the *rule*.
- (3) The information notice must not contain anything other than the statements and information required by ■ CONC 4.4.3R (2), except for the *firm's* trading name, address and other contact details. It should set out the required information clearly and concisely, in plain language. The information notice must be sent to the *customer* in a *durable medium*, for example on paper, as an email, or as an attachment to an email: it is insufficient to make the notice available on a website or to email a link to a webpage that contains the relevant information and statements.
- (4) The *firm* should not ask for or take the *customer's* payment details until it has received the customer confirmation. This means, for example, that *firms* should construct their websites so that *customers* cannot access any webpage that enables them to input their payment details before they have received the information notice and given the customer confirmation.
- (5) ■ CONC 4.4.3 R applies to each *firm* in a chain of *credit brokers* separately. If *firm A* introduces the *customer* to *firm B* (where B is a *credit broker*), any information notice given by A cannot cover fees which B might charge: B will have to issue its own information notice to the *customer*, and the *customer* will have to provide a separate

customer confirmation, before B can ask for or make use of the *customer's* payment details.

- (6) ■ CONC 4.4.3 R does not apply to *credit broking* that relates only to *credit agreements* secured on *land*.

4.5 Commissions

Application

4.5.1

R

- (1) ■ CONC 4.5.2 G applies to a *firm* with respect to *consumer credit lending*.
- (2) ■ CONC 4.5.3 R to ■ CONC 4.5.4 R apply to a *firm* with respect to *credit broking* in relation to:
 - (a) *regulated credit agreements*; and
 - (b) *regulated consumer hire agreements*.
- (3) ■ CONC 4.5.3 R to ■ CONC 4.5.4 R also apply to a *firm* carrying on the activities specified in article 36A(1)(a) or (b) of the *Regulated Activities Order* in relation to:
 - (a) *credit agreements* that would be *regulated credit agreements* but for the *relevant provisions*; and
 - (b) *consumer hire agreements* that would be *regulated consumer hire agreements* but for articles 60O and 60Q of the *Regulated Activities Order*.
- (4) ■ CONC 4.5.5G to ■ CONC 4.5.8G apply to a *firm* with respect to *consumer credit lending* and *credit broking* in relation to a *regulated credit agreement* the purpose of which (in whole or in part) is to finance the purchase of a motor vehicle or under which a motor vehicle is bailed or hired.

Commissions lenders to credit brokers

4.5.2

G

A *lender* should only offer to, or enter into with, a *firm* a commission agreement providing for differential commission rates or providing for payments based on the volume and profitability of business where such payments are justified based on the extra work of the *firm* involved in that business.

[Note: paragraph 5.5 (box) of *ILG*]

Commissions: credit brokers

4.5.3

R

A *credit broker* must prominently disclose to a *customer* in good time before a *credit agreement* or a *consumer hire agreement* is entered into, the existence and nature of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner* or a third party, where the existence or amount of the commission, fee or other remuneration could actually or potentially:

- (1) affect the impartiality of the *credit broker* in recommending the *credit agreement* or the *consumer hire agreement*; or

- (2) if made known to the *customer*, have a material impact on the *customer's* transactional decision to enter into the *credit agreement* or the *consumer hire agreement*.

[Note: paragraph 3.7i (box) and 3.7j of *CBG* and 5.5 (box) of *ILG*]

4.5.3A

R

In circumstances where the *credit broker* is required to disclose the existence and nature of any commission, fee or other remuneration under **■ CONC 4.5.3R**, it must also disclose to the *customer*, at the same time and with equal prominence, how the existence and nature of this commission, fee or other remuneration may affect the amounts payable by the *customer* under the relevant *credit agreement* or *consumer hire agreement*.

4.5.3B

G

- (1) Where the amount of any commission, fee or other remuneration in **■ CONC 4.5.3R** varies due to a factor specified in the arrangement or agreement under which the commission, fee or other remuneration is payable, for example a specific feature of the *credit agreement* or *consumer hire agreement* or the level of work undertaken by the *credit broker*, the *credit broker* should make disclosure under **■ CONC 4.5.3R** in relation to the commission, fee or other remuneration.

- (2) Where:

- (a) the *firm* has entered into arrangements (irrespective of how many other *persons* those arrangements are with) under which it may earn commission, fees or other remuneration in relation to two or more different *credit agreements* or *consumer hire agreements*;
- (b) the *customer* could be eligible for two or more of those agreements;
- (c) the *credit agreement* or the *consumer hire agreement* the *firm* is recommending is one of those agreements;
- (d) the commission, fees or other remuneration payable to the *firm* varies depending on which of the *credit agreements* or *consumer hire agreements* the *customer* enters into,

the *firm* should make disclosure to the *customer* under **■ CONC 4.5.3R** in relation to the arrangements.

- (3) The disclosure in (2) may be in general terms, but it should enable the *customer* reasonably to appreciate the effect of the arrangements.
- (4) The *credit broker* is not, under **■ CONC 4.5.3AR**, required to provide to the *customer* an individually tailored illustration of how the commission, fees or other remuneration in **■ CONC 4.5.3R** may affect the amounts payable by the *customer* under the *credit agreement* or *consumer hire agreement*.

4.5.4

R

At the request of the *customer*, a *credit broker* must disclose to the *customer*, in good time before a *regulated credit agreement* or a *regulated consumer hire agreement* is entered into, the amount (or if the precise amount is not

known, the likely amount) of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner* or a third party.

[Note: paragraph 3.7i (box) of CBG]

Purpose

4.5.5

G

The purpose of ■ CONC 4.5.6R to ■ CONC 4.5.8G is to prohibit *credit brokers* and *lenders* to whom they introduce *customers* wishing to enter into *regulated credit agreements* to finance the acquisition of motor vehicles from making or relying on arrangements under which *credit brokers* are given authority to decide or negotiate the prices of those *regulated credit agreements* on behalf of *lenders* and the amount of commission the *credit brokers* earn is affected by those prices.

Prohibition

4.5.6

R

A *lender* or *credit broker* must not:

enter into or have rights or obligations under a *discretionary commission arrangement*; or

seek to exercise, enforce or rely on rights or obligations under a *discretionary commission arrangement*, including any rights or obligations to receive or tender payment of commission, fee or other financial consideration.

Examples of discretionary commission arrangements

4.5.7

G

The following are examples of *discretionary commission arrangements*:

- (1) An agreement under which the *lender* sets a minimum rate of interest and the commission payable by the *lender* to the *credit broker* in respect of a *regulated credit agreement* entered into by the *lender* is calculated by reference to the difference between the rate of interest negotiated by the *credit broker* and payable by the *customer* under the *regulated credit agreement* and the minimum rate of interest. These types of arrangements are often referred to as "increasing difference in charges" or "interest rate upward adjustment" arrangements.
- (2) An agreement under which the *lender* sets a maximum rate of interest and the commission payable by the *lender* to the *credit broker* in respect of a *regulated credit agreement* entered into by the *lender* is calculated by reference to the difference between the rate of interest negotiated by the *credit broker* and payable by the *customer* under the *regulated credit agreement* and the maximum rate of interest. These types of arrangements are often referred to as "decreasing difference in charges" or "interest rate downward adjustment" arrangements.
- (3) An arrangement or agreement under which the commission payable by the *lender* to the *credit broker* in respect of a *regulated credit agreement* entered into by the *lender* varies (within set parameters) according to the rate of interest negotiated by the *credit broker* and payable by the *customer* under the *regulated credit agreement*. These types of arrangement are often referred to as "scaled models".

4.5.8

G

Accrued commissions

- (1) ■ CONC 4.5.6R does not affect commissions under *discretionary commission arrangements* liability for which accrued before the date on which ■ CONC 4.5.6R came into force. ■ CONC 4.5.6R does affect, however, commissions under *discretionary commission arrangements* that became due on or after the date on which ■ CONC 4.5.6R came into force, irrespective of whether the relevant *discretionary commission arrangement* was entered into before or after the date on which ■ CONC 4.5.6R came into force.
- (2) Accordingly, commissions under a *discretionary commission arrangement* relating to *regulated credit agreements* entered into before the date on which ■ CONC 4.5.6R came into force are not affected by ■ CONC 4.5.6R.
- (3) However, commissions under a *discretionary commission arrangement* relating to *regulated credit agreements* entered into after the date on which ■ CONC 4.5.6R came into force (whether or not the *discretionary commission arrangement* was entered into before that date) are affected by ■ CONC 4.5.6R.

4.6 Pre-contract disclosure: continuous payment authorities

Application

4.6.1

R

- (1) This section applies to:
- (a) a *firm* with respect to *consumer credit lending*; or
 - (b) a *firm* with respect to *consumer hiring*; or
 - (c) a *firm* with respect to *operating an electronic system in relation to lending* in relation to a prospective *borrower* under a *P2P agreement*.

Disclosure of continuous payment authorities

4.6.2

R

- (1) Before entering into a *regulated credit agreement* or *regulated consumer hire agreement*, or before a *P2P agreement* is entered into, under which the *customer* may grant a *continuous payment authority*, the *firm* must provide the *customer* with an adequate explanation of the matters in (2).
- (2) The matters referred to in (1) are:
- (a) what a *continuous payment authority* is and how it works;
 - (b) how the *continuous payment authority* will be applied by the *firm*, including where the *firm* provides *high-cost short-term credit* that it may only be used twice to collect the whole sum due in relation to the agreement or where the agreement provides for repayment in instalments, in relation to an instalment;
 - (c) how the *customer* can cancel the *continuous payment authority*;
 - (d) whether alternative repayment options are available;
 - (e) the choice of an appropriate due date for payment;
 - (f) the choice of an alternative payment date (if applicable);
 - (g) the consequences if sufficient funds are not available on the due date (or an alternative payment date if agreed);
 - (h) whether further attempts may be made to collect payment and, if so, the basis on which further attempts would be made, the days or period over which the further attempts would be made and the frequency of the further attempts;
 - (i) other than in relation to *high-cost short-term credit*, whether part payment (a sum due which less than the full sum due at the time the *firm's* payment request is made) may be sought and, if

so, the basis on which and frequency with which payment would be sought and whether part payments would be subject to a minimum amount or percentage;

- (j) in relation to *high-cost short-term credit*, the *firm* will not seek part payment (a sum due which is less than the full sum due at the time the *firm's* payment request is made) unless the *firm* is willing to accept such less sum and, after being notified of that sum and when a payment request would be made, the *customer* has given express consent to the *firm* to make such a payment request; and
- (k) whether default fees and other charges may be added and, if so, the circumstances in which these may be incurred and the amount of such fees and charges or the basis on which they will be calculated.

[Note: paragraph 3.9miii of DCG]

4.6.3 **R** A *firm* must include the terms of the *continuous payment authority*, in plain and intelligible language, as part of the *credit agreement* or *consumer hire agreement* presented to the *customer* or *P2P agreement* presented to the *borrower*.

[Note: paragraph 3.9miii of DCG]

4.6.4 **R** [deleted]

Agreements where there is a guarantor etc

- 4.6.5** **R**
- (1) This *rule* applies if:
 - (a) a *firm* is to enter into a *regulated credit agreement* or a *regulated consumer hire agreement*, or is to facilitate the entry into a *P2P agreement*;
 - (b) an *individual* other than the *borrower* or the *hirer* (in this *rule* referred to as "the guarantor") is to provide a guarantee or an indemnity (or both) in relation to the *regulated credit agreement*, the *regulated consumer hire agreement* or the *P2P agreement*; and
 - (c) the guarantor is to grant a *continuous payment authority*.
 - (2) The *firm* must, before the guarantor provides the guarantee or the indemnity, provide the guarantor with an adequate explanation of the matters in ■ CONC 4.6.2R(2).
 - (3) For the purposes of (2), ■ CONC 4.6.2R(2) applies as if references to the *customer* were references to the guarantor.
 - (4) The *firm* must include the terms of the *continuous payment authority*, in plain and intelligible language, in the document that includes the guarantee or the indemnity (or both).
 - (5) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

4.7 Information to be provided in relation to current account agreements

Application

4.7.1 **R** This section applies to a *firm* with respect to *consumer credit lending*.

Information on entering into current account

- 4.7.2 **R**
- (1) When a *firm* enters into a current account agreement where:
 - (a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and
 - (b) if the account-holder did so, this would be a *regulated credit agreement*;

the current account agreement must contain the information in (2) and (3).

[Note: section 74A(1) of CCA]
 - (2) The information required by (1) is:
 - (a) the rate of interest charged on the amount by which the account-holder overdraws on the current account or exceeds the pre-arranged overdraft limit;
 - (b) any conditions applicable to that rate;
 - (c) any reference rate on which that rate is based;
 - (d) information on any changes to that rate of interest (including the periods that the rate applies to and any conditions or procedure applicable to changing that rate); and
 - (e) any other charges payable by the account holder under the agreement (and the conditions under which those charges may be varied).

[Note: section 74A(2) of CCA]
 - (3) Where different rates of interest are charged in different circumstances, the *firm* must provide the information in (2)(a) to (d) in respect of each rate.

[Note: section 74A(4) of CCA]

[Note: article 18 of the *Consumer Credit Directive*]

Additional requirements in relation to certain current accounts

4.7.3

G

In addition to the *rules* in this section, *BCOBS* contains *rules* about information and tools to be provided to *customers* which may apply to *firms* that engage in *consumer credit lending* in connection with overdrafts on current accounts. In particular:

- (1) ■ **BCOBS 4.4** (Further information to be provided about personal current accounts) contains *rules* requiring certain *firms* that offer personal current accounts to provide information about overdrafts and other matters to applicants for certain types of current account, and to publish such information; and
- (2) ■ **BCOBS 8** (Tools for personal current account customers) contains *rules* requiring certain *firms* to make available tools to enable *banking customers* to:
 - (a) calculate the cost of overdrawing on a current account; and
 - (b) obtain an indication of the likelihood they will be approved for an *authorised non-business overdraft agreement* of a particular amount.

4.8 Pre-contract: unfair business practices: consumer credit lending

Application

4.8.1 **R** This section applies to a *firm* carrying on *consumer credit lending*.

Unfair business practices

4.8.2 **R** A *firm* must not unfairly encourage, incentivise or induce a *customer* to enter into a *regulated credit agreement* quickly without allowing the *customer* time to consider the pre-contract information under section 55 of the CCA and the explanations provided under ■ CONC 4.2.5 R.

[Note: paragraph 5.10 of *ILG*]

4.8.3 **G** Stating an end date for a promotion would not amount to the behaviour in ■ CONC 4.8.2 R.

[Note: paragraph 5.10 (box) of *ILG*]

4.8.4 **R** A *firm* must not unfairly encourage, incentivise or induce a *customer* to enter into a *regulated credit agreement* for an amount higher than the *customer* requests.

[Note: paragraph 5.11 of *ILG*]

4.8.5 **G** Merely offering a *customer* more *credit* than the *customer* requested would not amount to the behaviour in ■ CONC 4.8.4 R where:

- (1) the offer of the higher amount was based on a proper *creditworthiness assessment*; or
- (2) the *firm* offers more advantageous terms, conditions or prices to *customers* for larger loans, provided that such offers are sufficiently transparent and a proper *creditworthiness assessment* has been carried out;

and the *customer* was not pressurised or unfairly coerced into accepting the higher amount of *credit*.

[Note: paragraph 5.11 (box) of *ILG*]

4.8.6

R

A firm must not lead a customer to believe that the customer's current debt repayments can be reduced under a regulated credit agreement over the same term when this is not the case.

[Note: paragraph 5.13 of ILG]

Chapter 5

Responsible lending



5.1 Application [deleted]

[deleted]



**5.2 Creditworthiness assessment:
before agreement [deleted]**

[deleted]

5.2A Creditworthiness assessment

Application

5.2A.1 **R** Subject to **■** CONC 5.2A.2R, this section applies to a *firm* with respect to *consumer credit lending*.

5.2A.2 **R** This section does not apply to:

- (1) an agreement under which a *firm* takes an article in *pawn* and under the terms of the agreement:
 - (a) the *customer's* total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article *pawned* by the *customer*; and
 - (b) the effect of the passing of property in the *pawned* article to the *firm* under section 120 of the CCA, or of a sale of the article under section 121 of the CCA, would, therefore, be (at the very least) to discharge the debt secured by the pawn and any other obligation to pay a sum of money under the agreement including any expenses of sale;
- (2) a current account agreement where:
 - (a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and
 - (b) if the account-holder did so, this would be a *regulated credit agreement* (overrunning);
- (3) a *non-commercial agreement*; or
- (4) a *small borrower-lender-supplier agreement* which is a *restricted-use credit agreement*.

Interpretation

5.2A.3 **R** In this section, references to 'repayment' refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a *regulated credit agreement* or any charge payable by the customer under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates).

Creditworthiness assessment

- 5.2A.4** R A *firm* must undertake a reasonable assessment of the creditworthiness of a *customer* before:

 - (1) entering into a *regulated credit agreement*; or
 - (2) significantly increasing the amount of *credit* provided under a *regulated credit agreement*; or
 - (3) significantly increasing a *credit limit* for *running-account credit* under a *regulated credit agreement*.
- 5.2A.5** R The *firm* must not take a step in ■ CONC 5.2A.4R(1) to (3) unless it can demonstrate that it has, before doing so:

 - (1) undertaken a *creditworthiness assessment* and, where relevant, the assessment under ■ CONC 5.2A.31R(2) (guarantors) in accordance with the *rules* set out in this section; and
 - (2) had proper regard to the outcome of that assessment in respect of affordability risk.
- 5.2A.6** G If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last *creditworthiness assessment*, a cumulative increase that is significant, then a further *creditworthiness assessment* is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.
- 5.2A.7** R A *firm* must base its *creditworthiness assessment* on sufficient information:

 - (1) of which it is aware at the time the *creditworthiness assessment* is carried out;
 - (2) obtained, where appropriate, from the *customer*, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable *creditworthiness assessment*.
- 5.2A.8** G ■ CONC 5.2A.20R to ■ CONC 5.2A.25G contain *rules* and *guidance* in relation to the factors that should be taken into account in an individual case when deciding how much information is sufficient for the purposes of the *creditworthiness assessment*, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.
- 5.2A.9** R *Rules* and *guidance* in this section apply in relation to carrying out a *creditworthiness assessment*.

The subject matter of the creditworthiness assessment

5.2A.10

R

The *firm* must consider:

- (1) the risk that the *customer* will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and
- (2) the risk to the *customer* of not being able to make repayments under the agreement in accordance with ■ CONC 5.2A.12R (referred to as ‘affordability risk’ in this section).

5.2A.11

G

In relation to ■ CONC 5.2A.10R, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the *creditworthiness assessment*.

5.2A.12

R

The *firm* must consider the *customer’s* ability to make repayments under the agreement:

- (1) as they fall due over the life of the agreement and, where the agreement is an *open-end agreement*, within a reasonable period;
- (2) out of, or using, one or more of the following:
 - (a) the *customer’s* income;
 - (b) income from savings or assets jointly held by the *customer* with another *person*, income received by the *customer* jointly with another *person* or income received by another *person* in so far as it is reasonable to expect such income to be available to the *customer* to make repayments under the agreement; and/or
 - (c) savings or other assets where the *customer* has indicated clearly an intention to repay (wholly or partly) using them;
- (3) without the *customer* having to borrow to meet the repayments;
- (4) without failing to make any other payment the *customer* has a contractual or statutory obligation to make; and
- (5) without the repayments having a significant adverse impact on the *customer’s* financial situation.

5.2A.13

R

If the *customer* intends to make repayments (wholly or partly) using savings or other assets, the *firm* must take into account:

- (1) the purpose for which the savings or assets are or will be held;
- (2) the likelihood of the savings or assets being available to make repayments under the agreement; and
- (3) any significant adverse impact on the *customer’s* financial situation of using those savings or assets.

5.2A.14 **R** When considering affordability risk, the *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

The customer’s income and expenditure

5.2A.15 **R**

- (1) This *rule* applies unless:
 - (a) the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *customer* is able to make repayments in accordance with ■ CONC 5.2A.12R, so as to make the actions described in (2) to (4) disproportionate; or
 - (b) the *customer* has indicated clearly an intention to repay wholly using savings or other assets (see ■ CONC 5.2A.13R).
- (2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *customer’s* current income.
- (3) Where it is reasonably foreseeable that there is likely to be a reduction in the *customer’s* income:
 - (a) during the term of the agreement; or
 - (b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see ■ CONC 5.2A.26R),
 which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that reduction.
- (4) The *firm* must take account of the *customer’s* income it has determined or estimated in accordance with (2) and (3).
- (5) The *firm* may only take into account an expected future increase in the *customer’s* income where the *firm* reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.2A.16 **G**

- (1) A *firm* that proposes to rely on the exception in ■ CONC 5.2A.15R(1)(a) should keep in mind that the burden would be on the *firm* to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the *customer’s* income disproportionate.
- (2) An estimate of the *customer’s* income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.
- (3) For the purpose of considering the *customer’s* income under ■ CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the *customer* without independent evidence (for example, in the form of information supplied by a *credit reference agency* or documentation of a third party supplied by the third party or by the *customer*).

5.2A.17 **R**

- (4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out. If, in such a case, the *customer's* income does not increase in line with expectations, the *firm* should consider deferring or limiting the obligation to repay until the *customer's* income has reached an appropriate level.
- (5) Income can include income other than salary and wages.
- (1) This *rule*:
- applies only where **■ CONC 5.2A.15R** also applies; and
 - does not apply where the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *customer's* non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.
- (2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *customer's* current non-discretionary expenditure.
- (3) Where it is reasonably foreseeable that there is likely to be an increase in the *customer's* non-discretionary expenditure:
- during the term of the agreement; or
 - in the case of an *open-end agreement*, during the likely duration of the *credit* (see **■ CONC 5.2A.26R**),
- which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that increase.
- (4) The *firm* must take account of the *customer's* non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).
- (5) The *firm* may only take into account an expected future decrease in non-discretionary expenditure where the *firm* reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.2A.18 **G**

- (1) Non-discretionary expenditure referred to in **■ CONC 5.2A.17R** includes payments needed to meet *priority debts* and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the *customer* has a contractual or statutory obligation to make, such as payment obligations arising under a *credit agreement* or a mortgage contract. Where there is a reasonable expectation that the *customer* will have responsibility to pay only a share or a part of a payment required pursuant to a contractual or statutory obligation then the *firm* may, in appropriate cases, take this into account.

An analysis of the size of the *customer's* debts compared to the *customer's* income may therefore form part of the *creditworthiness assessment* where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in ■ CONC 5.2A.20R.

Non-discretionary expenditure includes expenditure for other *persons* whose financial obligations the *customer* meets wholly or in part. Where the *firm* has under ■ CONC 5.2A.12R(2)(b) taken into account income received by the *customer* jointly with another *person* or income received by a *person* other than the *customer* it should also take into account non-discretionary expenditure relating to that other *person*. In those circumstances, references in this section to non-discretionary expenditure of the *customer* should be taken to include the non-discretionary expenditure of the other *person*.

An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

Where the *firm* can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the *customer's* income therefore applies, the *firm* is similarly not required to determine or estimate the *customer's* non-discretionary expenditure.

5.2A.19 **G**

- (1) For the purpose of considering the *customer's* non-discretionary expenditure under ■ CONC 5.2A.17R, the *firm* may take into account statistical data unless it knows or has reasonable cause to suspect that the *customer's* non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the *customer's* situation.
- (2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the *firm* is aware, or has reasonable cause to be aware from information in its possession, that the composition of the *customer's* household, or the number of dependants that the *customer* has, or the level of the *customer's* existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

Scope, extent and proportionality of assessment

5.2A.20 **R**

- (1) The extent and scope of the *creditworthiness assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.
- (2) The *firm* must consider:
 - (a) the types of information to use in the *creditworthiness assessment*;
 - (b) the content and level of detail of the information to use;
 - (c) whether the information in the *firm's* possession is sufficient;

- (d) whether and to what extent to obtain additional information from the *customer*;
 - (e) whether and to what extent to obtain information from a *credit reference agency*;
 - (f) any other sources of information to use;
 - (g) whether and to what extent to verify the accuracy of the information that is used;
 - (h) the degree of evaluation and analysis of the information that is used; and
 - (i) the steps to take to determine or estimate the *customer's* income or non-discretionary expenditure (where such a determination or estimate is required),
- having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the *firm* must have regard when complying with (2) and deciding what steps are needed to make the *creditworthiness assessment* a reasonable one include each of the following where applicable to the agreement:

- (a) the type of *credit*;
- (b) the amount of the *credit* or, where applicable, the *credit limit*;
- (c) the duration (or likely duration) of the *credit*;
- (d) the frequency of the repayments;
- (e) the amounts of the repayments;
- (f) the *total amount payable*;
- (g) the *total charge for credit*;
- (h) the *annual percentage rate of charge*;
- (i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the *customer* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates) is fixed or variable;
- (j) any other costs which will or may be payable by or on behalf of the *customer* in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the *customer* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates; and
- (k) any other potential adverse consequences for the *customer* arising under the agreement from a failure to make a repayment by the due date.

5.2A.21 G

- (1) The *firm* may have regard, where appropriate, to the purpose for which the *customer* intends to use the *credit*.
- (2) When considering, having regard to the factors in ■ CONC 5.2A.20R, what steps the *firm* needs to undertake to make the *creditworthiness assessment* a reasonable one, the *firm* should consider whether the

factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the *firm* should weigh up the factors before deciding what type of *creditworthiness assessment* is required.

- 5.2A.22** **G** The *firm* should also have regard to information of which it is aware at the time the *creditworthiness assessment* is carried out that may indicate that:
- (1) the *customer* is in, has recently experienced, or is likely to experience, financial difficulties (see ■ CONC 1.3); or
 - (2) the *customer* is vulnerable, for example because the *customer* has mental health difficulties or mental capacity limitations (see ■ CONC 2.10 and ■ CONC 7.2).
- 5.2A.23** **G** The *firm* may have regard, where appropriate, to information obtained in the course of previous dealings with the *customer*. However, the *firm* should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.
- 5.2A.24** **G** The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.
- Factors that will affect that level of risk include the actual or potential cost of the *credit* and the *total amount payable* in absolute terms and relative to the *customer's* financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the *total charge for credit* are low, the amount of information that is sufficient to support a reasonable *creditworthiness assessment* may be less than would be required:
- (a) in the case of more expensive *credit* or *credit* that is higher in amount; or
 - (b) where it is known that the *customer's* financial situation is such that the *credit* may be expected to have a more significant impact.
- 5.2A.25** **G**
- (1) In relation to ■ CONC 5.2A.24G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:
 - (a) the total value of the *customer's* outstanding debts relative to the *customer's* income is high; or
 - (b) there is a high likelihood that the *customer* will not make repayments under the agreement by their due dates.
 - (2) In relation to ■ CONC 5.2A.25G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

Open-end agreements

5.2A.26

R

In relation to an *open-end agreement*, the *firm* must make a reasonable assumption about the likely duration of the *credit* which should take into account:

- (1) the terms and conditions of the agreement;
- (2) any pre-contractual disclosure and explanation given to the customer under the CCA or CONC; and
- (3) the *customer's* intentions, where known to the *firm*.

Assumptions in relation to running-account credit

5.2A.27

R

- (1) In relation to entering into a *regulated credit agreement for running-account credit*, the *firm* must assume that the *customer* draws down the entire *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.
- (2) In relation to significantly increasing the *credit limit* that applies to an existing *regulated credit agreement for running-account credit*, the *firm* must assume that the *customer* draws down the entire available balance up to the increased *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.
- (3) If, after considering the individual circumstances of the particular *customer* of which the *firm* is aware at the time the *creditworthiness assessment* is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of *credit* and repayments over the duration or likely duration of the *credit*, then the *firm* must do so and these assumptions must be reasonable ones.
- (4) The *firm* must set the *credit limit* in the light of the assumptions in (1) to (3).

5.2A.28

G

- (1) Unless (2) applies, the *firm* should, when making an assumption about the length of a reasonable period for repayment for the purposes of ■ CONC 5.2A.27R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the *credit limit*. The *firm* should take into account the terms and conditions of a loan likely to be available to that *customer* (whether from the *firm* or from another *lender*) and any other factors that the *firm* reasonably considers to be relevant.
- (2) If, however, after considering the individual circumstances of the particular *customer* of which the *firm* is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the *firm* may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the *customer* complied with those terms, the drawdown of the *credit limit* would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent amount.

- (3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of ■ CONC 5.2A.27R(3), in addition to the assumptions described in ■ CONC 5.2A.27R(1) or (2). In those circumstances, the *firm* should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of its *customers* in relation to that product or type of product, or of *customers* of that type generally, but should also consider any factors particular to the individual *customer*, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in ■ CONC 5.2A.27R(1) or (2), as well as in respect of the subsequent duration of the *credit*, depending on those factors.

Lending to joint borrowers and businesses

5.2A.29 **G** The *firm* may need to take into account the different circumstances that may surround a *customer* where the *customer* is borrowing for business purposes. For example, it may be reasonable to take into account the *customer's* business plan, although the *creditworthiness assessment* should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the *customer* is less regular than for other types of *customer*.

- 5.2A.30 **G**
- (1) Where there are *customers* acting together as joint *borrowers*, the *firm* should consider whether it may be appropriate to carry out a *creditworthiness assessment* separately for each *customer* (as well as one for them together), having regard to the risk to that *customer* arising from the agreement were the *customer* to be treated as being solely responsible for obligations of the joint *borrowers* under the agreement.
 - (2) Where the *borrower* is a *partnership* or one or more members of an unincorporated association acting as agent for other such members, the *partners* or members may be treated as a single *customer* for the purposes of the *creditworthiness assessment*.

Creditworthiness assessment where there is a guarantor

- 5.2A.31 **R**
- (1) This *rule* applies if, in relation to a *regulated credit agreement*:
 - (a) an *individual* other than the *borrower* (in this section referred to as 'the guarantor') is to provide a guarantee or an indemnity (or both) (in this *rule* and ■ CONC 5.2A.32G referred to as 'the guarantee'); and
 - (b) the *firm* is required to undertake a *creditworthiness assessment* in respect of the *borrower*.
 - (2) Before entering into the *regulated credit agreement* or significantly increasing the amount of *credit* provided under the agreement or significantly increasing a *credit limit* for *running-account credit* under the agreement, the *firm* must undertake a reasonable assessment of the potential for the guarantor's commitments in respect of the agreement to have a significant adverse impact on the guarantor's financial situation.

5.2A.32

G

- (3) The *firm* must base the assessment under (2) on sufficient information:
 - (a) of which it is aware at the time the assessment is carried out;
 - (b) obtained, where appropriate, from the guarantor or from the *borrower* on the guarantor's behalf, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable assessment.
 - (4) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.
- (1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the *borrower*, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.
 - (2) If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last assessment under ■ CONC 5.2A.31R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.
 - (3) In this *guidance*, references to 'payment' refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).
 - (4) The *firm* should, when carrying out an assessment under ■ CONC 5.2A.31R(2), have regard to ■ CONC 5.2A.8G to ■ CONC 5.2A.24G(1) (excluding ■ CONC 5.2A.9R, ■ CONC 5.2A.14R, ■ CONC 5.2A.16G(4), ■ CONC 5.2A.20R(3) and ■ CONC 5.2A.21G(1)), ■ CONC 5.2A.29G and ■ CONC 5.2A.30G but as if:
 - (a) each of those provisions that is a *rule* were *guidance* and as if 'should' appeared in that *rule* instead of 'must' or 'may';
 - (b) references to 'agreement' are to the 'guarantee';
 - (c) subject to (g) below, references to 'the *customer*' or '*borrower*' are references to the 'guarantor';
 - (d) references to 'repayments' are references to 'payments';
 - (e) references to 'repay' are references to 'pay';
 - (f) references to the '*creditworthiness assessment*' are references to the assessment under ■ CONC 5.2A.31R(2);
 - (g) references in ■ CONC 5.2A.20R(2)(d) and ■ CONC 5.2A.23G to 'the *customer*' are to the 'guarantor' as well as 'the *customer*'; and
 - (h) the reference in ■ CONC 5.2A.20R(2) to the factors listed in ■ CONC 5.2A.20R(3) is to the factors listed in ■ CONC 5.2A.32G(5).
 - (5) The factors to which the *firm* should have regard for the purposes of ■ CONC 5.2A.19R(2) when deciding what steps should be taken to make the assessment under ■ CONC 5.2A.31R(2) a reasonable one include each of the following:
 - (a) the total potential liability of the guarantor under the guarantee;

- (b) the duration (or likely duration) of the guarantee;
 - (c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and
 - (d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.
- (6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor's financial circumstances, where known.
- (7) The provision of the guarantee, and the reasonable assessment of the guarantor under ■ CONC 5.2A.31R(2), do not remove or reduce the obligation on the *firm* to carry out a reasonable *creditworthiness assessment* of the *borrower*. *Firms* are reminded of the *rule* in ■ CONC 5.2A.14R that, in considering affordability risk for the *borrower*, a *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

Policies and procedures for creditworthiness assessment

5.2A.33

R

A *firm* must:

establish, implement and maintain clear and effective policies and procedures:

- (a) to enable it to carry out *creditworthiness assessments* or assessments under ■ CONC 5.2A.31R(2); and
- (b) setting out the principal factors it will take into account in carrying out *creditworthiness assessments* or assessments under ■ CONC 5.2A.31R(2);

set out the policies and procedures in (1) in writing, and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;

assess and periodically review:

- (a) the effectiveness of the policies and procedures in (1); and
- (b) the *firm's* compliance with those policies and procedures and with its obligations under ■ CONC 5.2A;

in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;

maintain a record, on paper or in electronic form, of each transaction where a *regulated credit agreement* is entered into, or where there is a significant increase in the amount of *credit* provided under a *regulated credit agreement* or a *credit limit* for *running-account credit* under a *regulated credit agreement*, sufficient to demonstrate that:

- (a) a *creditworthiness assessment* or an assessment under ■ CONC 5.2A.31R(2) was carried out where required; and
 - (b) the *creditworthiness assessment* or the assessment under ■ CONC 5.2A.31R(2) was reasonable and was undertaken in accordance with ■ CONC 5.2A,
- and so to enable the *FCA* to monitor the *firm's* compliance with its obligations under ■ CONC 5.2A; and
- (other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

5.2A.34 G *Firms* are reminded of the *guidance* on record-keeping in ■ SYSC 9.1.4G and ■ 9.1.5G.

Unfair business practices

5.2A.35 R A *firm* must not complete some or all of those parts of an application for *credit* under a *regulated credit agreement* intended to be completed by the *customer*, without the consent of the *customer* or unless the *customer* has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.2A.36 R A *firm* must not accept an application for *credit* under a *regulated credit agreement* where the *firm* knows or has reasonable cause to suspect that the *customer* has not been truthful in completing the application in relation to information relevant to the *creditworthiness assessment*.

5.2A.37 G An example of when a *firm* has reasonable cause to suspect that the *customer* has not been truthful may be where information supplied by the *customer* concerning income or employment status is clearly inconsistent with other information of which the *firm* is aware.



5.3 Conduct of business in relation to creditworthiness and affordability [deleted]

[deleted]

 5.4 Conduct of business: credit brokers**Application**

5.4.1 **R** This section applies to a *firm* with respect to *credit broking*.

Conduct of business

5.4.2 **R** (1) In giving explanations or advice, or in making recommendations, a *firm* must pay due regard to the *customer's* needs and circumstances.

(2) In complying with (1) a *firm* must pay due regard to whether the *credit* product is affordable and whether there are any factors that the *firm* knows, or reasonably ought to know, that may make the product unsuitable for that *customer*.

[Note: paragraphs 4.32 to 4.36 of *CBG*]

5.4.3 **R** A *firm* which undertakes to search the product market or a part of it before effecting an introduction must, before doing so, search the product market to the extent stated to the *customer*.

[Note: paragraph 4.41j of *CBG*]



5.5 Creditworthiness assessment: P2P agreements [deleted]

[deleted]

5.5A Creditworthiness assessment: P2P agreements

Application

- 5.5A.1 **R** Subject to **■ CONC 5.5A.2R**, this section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* or a prospective *borrower* under a *P2P agreement*.
- 5.5A.2 **R** This section does not apply in relation to:
- (1) an agreement under which a *person* takes an article in *pawn* and under the terms of the agreement:
 - (a) the *borrower's* total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article *pawned* by the *borrower*; and
 - (b) the effect of the passing of property in the *pawned* article to the *person* under section 120 of the CCA, or of a sale of the article under section 121 of the CCA, would, therefore, be (at the very least) to discharge the debt secured by the *pawn* and any other obligation to pay a sum of money under the agreement including any expenses of sale; or
 - (2) a current account agreement where:
 - (a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and
 - (b) if the account-holder did so, this would be a *P2P agreement* (overrunning).
- 5.5A.3 **G**
- (1) This section contains *rules* and *guidance* that apply to a *person* operating an electronic system that facilitates *persons* becoming *lenders* and *borrowers* under *P2P agreements*, in contrast to **■ CONC 5.2A** which applies to a *lender* engaged in *consumer credit lending*.
 - (2) Where **■ CONC 5.2A** applies to a *lender*, and **■ CONC 5.5A** applies to the *person* operating the electronic system, each will be subject to a separate obligation to undertake a *creditworthiness assessment*. However, *firms* are reminded of **■ SYSC 8** which permits outsourcing of operational functions subject to certain requirements (and with the

firm outsourcing functions remaining fully responsible for discharging all of its obligations under the *regulatory system*).

Interpretation

5.5A.4 **R** In this section, references to ‘repayment’ refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a *P2P agreement* or any charge payable by the *borrower* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates) and references to a ‘*borrower*’ include, where the context so allows, references to a prospective *borrower*.

Creditworthiness assessment

5.5A.5 **R** A *firm* must undertake a reasonable assessment of the creditworthiness of a *borrower* before:

- (1) a *P2P agreement* is made; or
- (2) the amount of *credit* provided under a *P2P agreement* is significantly increased; or
- (3) a *credit limit* for *running-account credit* under a *P2P agreement* is significantly increased.

5.5A.6 **R** The *firm* must not facilitate the taking of a step in **■ CONC 5.5A.5R(1)** to (3) unless it can demonstrate that it has, before doing so:

- (1) undertaken a *creditworthiness assessment* and, where relevant, the assessment under **■ CONC 5.5A.32R(2)** (guarantors) in accordance with the *rules* set out in this section; and
- (2) had proper regard to the outcome of that assessment in respect of affordability risk.

5.5A.7 **G** If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last *creditworthiness assessment*, a cumulative increase that is significant, then a further *creditworthiness assessment* is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.

5.5A.8 **R** A *firm* must base its *creditworthiness assessment* on sufficient information:

- (1) of which it is aware at the time the *creditworthiness assessment* is carried out;
- (2) obtained, where appropriate, from the *borrower*, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable *creditworthiness assessment*.

5.5A.9 **G** ■ CONC 5.5A.21R to ■ CONC 5.5A.26G contain *rules* and *guidance* in relation to the factors that should be taken into account in an individual case when deciding how much information is sufficient for the purposes of the *creditworthiness assessment*, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

5.5A.10 **R** *Rules and guidance* in this section apply in relation to carrying out a *creditworthiness assessment*.

The subject matter of the creditworthiness assessment

5.5A.11 **R** The *firm* must consider:

- (1) the risk that the *borrower* will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and
- (2) the risk to the *borrower* of not being able to make repayments under the agreement in accordance with ■ CONC 5.5A.13R (referred to as ‘affordability risk’ in this section).

5.5A.12 **G** In relation to ■ CONC 5.5A.11R, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the *creditworthiness assessment*.

5.5A.13 **R** The *firm* must consider the *borrower’s* ability to make repayments under the agreement:

- (1) as they fall due over the life of the agreement and, where the agreement is an *open-end agreement*, within a reasonable period;
- (2) out of, or using, one or more of the following:
 - (a) the *borrower’s* income;
 - (b) income from savings or assets jointly held by the *borrower* with another *person*, income received by the *borrower* jointly with another *person* or income received by another *person* in so far as it is reasonable to expect such income to be available to the *borrower* to make repayments under the agreement; and/or
 - (c) savings or other assets where the *borrower* has indicated clearly an intention to repay (wholly or partly) using them;
- (3) without the *borrower* having to borrow to meet the repayments;
- (4) without failing to make any other payment the *borrower* has a contractual or statutory obligation to make; and
- (5) without the repayments having a significant adverse impact on the *borrower’s* financial situation.

5.5A.14 **R** If the *borrower* intends to make repayments (wholly or partly) using savings or other assets, the *firm* must take into account:

- (1) the purpose for which the savings or assets are or will be held;
- (2) the likelihood of the savings or assets being available to make repayments under the agreement; and
- (3) any significant adverse impact on the *borrower's* financial situation of using those savings or assets.

5.5A.15 **R** When considering affordability risk, the *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

The borrower's income and expenditure

5.5A.16 **R** (1) This *rule* applies unless:

- (a) the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *borrower* is able to make repayments in accordance with ■ CONC 5.5A.13R, so as to make the actions described in (2) to (4) disproportionate; or
- (b) the *borrower* has indicated clearly an intention to repay wholly using savings or other assets (see ■ CONC 5.5A.14R).

- (2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *borrower's* current income.
- (3) Where it is reasonably foreseeable that there is likely to be a reduction in the *borrower's* income:
 - (a) during the term of the agreement; or
 - (b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see ■ CONC 5.5A.27R),
 which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that reduction.

- (4) The *firm* must take account of the *borrower's* income it has determined or estimated in accordance with (2) and (3).
- (5) The *firm* may only take into account an expected future increase in the *borrower's* income where the *firm* reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.5A.17 **G** (1) A *firm* that proposes to rely on the exception in ■ CONC 5.5A.16R(1)(a) should keep in mind that the burden would be on the *firm* to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the *borrower's* income disproportionate.

(2) An estimate of the *borrower's* income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

5.5A.18 **R**

- (3) For the purpose of considering the *borrower's* income under **■ CONC 5.2A.16R**, it is not generally sufficient to rely solely on a statement of current income made by the *borrower* without independent evidence (for example, in the form of information supplied by a *credit reference agency* or documentation of a third party supplied by the third party or by the *borrower*).
- (4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out.
- (5) Income can include income other than salary or wages.

- (1) This *rule*:
 - (a) applies only where **■ CONC 5.5A.16R** also applies; and
 - (b) does not apply where the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *borrower's* non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.
- (2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *borrower's* current non-discretionary expenditure.
- (3) Where it is reasonably foreseeable that there is likely to be an increase in the *borrower's* non-discretionary expenditure:
 - during the term of the agreement; or
 - in the case of an *open-end agreement*, during the likely duration of the *credit* (see **■ CONC 5.5A.27R**),
 which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that increase.
- (4) The *firm* must take account of the *borrower's* non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).
- (5) The *firm* may only take into account an expected future decrease in non-discretionary expenditure where the *firm* reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.5A.19 **G**

- (1) Non-discretionary expenditure referred to in **■ CONC 5.5A.18R** includes payments needed to meet *priority debts* and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the *borrower* has a contractual or statutory obligation to make, such as payment obligations arising under a *credit agreement* or a mortgage contract. Where there is a reasonable expectation that the *borrower* will have responsibility to pay only a share or a part of a payment required

pursuant to a contractual or statutory obligation then the *firm* may, in appropriate cases, take this into account.

- (2) An analysis of the size of the *borrower's* debts compared to the *borrower's* income may therefore form part of the *creditworthiness assessment* where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in ■ CONC 5.5A.21R.
- (3) Non-discretionary expenditure includes expenditure for other *persons* whose financial obligations the borrower meets wholly or in part. Where the *firm* has under ■ CONC 5.5A.13R(2)(b) taken into account income received by the *borrower* jointly with another *person* or income received by a *person* other than the *borrower* it should also take into account non-discretionary expenditure relating to that other *person*. In those circumstances, references in this section to non-discretionary expenditure of the *borrower* should be taken to include the non-discretionary expenditure of the other *person*.
- (4) An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.
- (5) Where the *firm* can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the *borrower's* income therefore applies, the *firm* is similarly not required to determine or estimate the *borrower's* non-discretionary expenditure.

5.5A.20 **G**

- (1) For the purpose of considering the *borrower's* non-discretionary expenditure under ■ CONC 5.5A.18R, the *firm* may take into account statistical data unless it knows or has reasonable cause to suspect that the *borrower's* non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the *borrower's* situation.
- (2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the *firm* is aware, or has reasonable cause to be aware from information in its possession, that the composition of the *borrower's* household, or the number of dependants that the *borrower* has, or the level of the *borrower's* existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

Scope, extent and proportionality of assessment

5.5A.21 **R**

- (1) The extent and scope of the *creditworthiness assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.
- (2) The *firm* must consider:
 - (a) the types of information to use in the *creditworthiness assessment*;

- (b) the content and level of detail of the information to use;
- (c) whether the information in the *firm's* possession is sufficient;
- (d) whether and to what extent to obtain additional information from the *borrower*;
- (e) whether and to what extent to obtain information from a *credit reference agency*;
- (f) any other sources of information to use;
- (g) whether and to what extent to verify the accuracy of the information that is used;
- (h) the degree of evaluation and analysis of the information that is used; and
- (i) the steps to take to determine or estimate the *borrower's* income or non-discretionary expenditure (where such a determination or estimate is required),

having regard to the factors listed in (3) where applicable to the agreement.

- (3) The factors to which the *firm* must have regard when complying with (2) and deciding what steps are needed to make the *creditworthiness assessment* a reasonable one include each of the following where applicable to the agreement:
- (a) the type of *credit*;
 - (b) the amount of the *credit* or, where applicable, the *credit limit*;
 - (c) the duration (or likely duration) of the *credit*;
 - (d) the frequency of the repayments;
 - (e) the amounts of the repayments;
 - (f) the *total amount payable*;
 - (g) the *total charge for credit* or the *cost of credit*;
 - (h) the *annual percentage rate of charge*;
 - (i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the *borrower* under a *hire-purchase agreement* in respect of an option to purchase the *goods* to which the agreement relates) is fixed or variable;
 - (j) any other costs which will or may be payable by or on behalf of the *borrower* in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the *borrower* under a *hire-purchase agreement* in respect of an option to purchase the *goods* to which the agreement relates; and
 - (k) any other potential adverse consequences for the *borrower* arising under the agreement from a failure to make a repayment by the due date.

5.5A.22



- (1) The *firm* may have regard, where appropriate, to the purpose for which the *borrower* intends to use the *credit*.

- (2) When considering, having regard to the factors in ■ CONC 5.5A.21R, what steps the *firm* needs to undertake to make the *creditworthiness assessment* a reasonable one, the *firm* should consider whether the factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the *firm* should weigh up the factors before deciding what type of *creditworthiness assessment* is required.

5.5A.23 **G** The *firm* should also have regard to information of which it is aware at the time the *creditworthiness assessment* is carried out that may indicate that:

- (1) the *borrower* is in, has recently experienced, or is likely to experience, financial difficulties (see ■ CONC 1.3); or
- (2) the *borrower* is vulnerable, for example because the *borrower* has mental health difficulties or mental capacity limitations (see ■ CONC 2.10 and ■ CONC 7.2).

5.5A.24 **G** The *firm* may have regard, where appropriate, to information obtained in the course of previous dealings with the *borrower*. However, the *firm* should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

5.5A.25 **G**

(1) The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.

(2) Factors that will affect that level of risk include the actual or potential cost of the *credit* and the *total amount payable* (or, where the *P2P agreement* is not a *regulated credit agreement*, the sum of the *cost of credit* plus the *credit limit* or the total sums made available under the *P2P agreement*, as well as any *advance payment*) in absolute terms and relative to the *borrower's* financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the *total charge for credit* are low, the amount of information that is sufficient to support a reasonable *creditworthiness assessment* may be less than would be required:

(a) in the case of more expensive *credit* or *credit* that is higher in amount; or

(b) where it is known that the *borrower's* financial situation is such that the *credit* may be expected to have a more significant impact.

5.5A.26 **G**

(1) In relation to ■ CONC 5.5A.25G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:

(a) the total value of the *borrower's* outstanding debts relative to the *borrower's* income is high; or

(b) there is a high likelihood that the *borrower* will not make repayments under the agreement by their due dates.

- (2) In relation to ■ CONC 5.5A.26G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

Open-end agreements

5.5A.27

R

In relation to an *open-end agreement*, the *firm* must make a reasonable assumption about the likely duration of the *credit* which should take into account:

- (1) the terms and conditions of the agreement;
- (2) any pre-contractual disclosure and explanation given to the *borrower* under the CCA or CONC; and
- (3) the *borrower's* intentions, where known to the *firm*.

Assumptions in relation to running-account credit

5.5A.28

R

- (1) In relation to a *lender* entering into a *P2P agreement* for *running-account credit*, the *firm* must assume that the *borrower* draws down the entire *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.
- (2) In relation to a *lender* significantly increasing the *credit limit* that applies to an existing *P2P agreement* for *running-account credit*, the *firm* must assume that the *borrower* draws down the entire available balance up to the increased *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.
- (3) If, after considering the individual circumstances of the particular *borrower* of which the *firm* is aware at the time the *creditworthiness assessment* is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of *credit* and repayments over the duration or likely duration of the *credit*, then the *firm* must do so and these assumptions must be reasonable ones.
- (4) The *firm* must take reasonable steps to procure the *lender* under the *P2P agreement* to set the *credit limit* in the light of the assumptions in (1) to (3).

5.5A.29

G

- (1) Unless (2) applies, the *firm* should, when making an assumption about the length of a reasonable period for repayment for the purposes of ■ CONC 5.5A.28R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the *credit limit*. The *firm* should take into account the terms and conditions of a loan likely to be available to that *borrower* (whether from the *lender* under the *P2P agreement* or from another *lender*) and any other factors that the *firm* reasonably considers to be relevant.

- (2) If, however, after considering the individual circumstances of the particular *borrower* of which the *firm* is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the *firm* may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the *borrower* complied with those terms, the drawdown of the *credit limit* would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent amount.
- (3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of ■ CONC 5.5A.28R(3), in addition to the assumptions described in ■ CONC 5.5A.28R(1) or (2). In those circumstances, the *firm* should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of *borrowers* under *P2P agreements* which it has facilitated, or of *borrowers* of that type generally, but should also consider any factors particular to the individual *borrower*, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in ■ CONC 5.5A.28R(1) or (2), as well as in respect of the subsequent duration of the *credit*, depending on those factors.

Lending to joint borrowers and businesses

5.5A.30 **G** The *firm* may need to take into account the different circumstances that may surround a *borrower* where the *borrower* is borrowing for business purposes. For example, it may be reasonable to take into account the *borrower's* business plan, although the *creditworthiness assessment* should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the *borrower* is less regular than for other types of *borrower*.

- 5.5A.31 **G**
- (1) Where there are *borrowers* acting together as joint *borrowers*, the *firm* should consider whether it may be appropriate to carry out a *creditworthiness assessment* separately for each *borrower* (as well as one for them together), having regard to the risk to that *borrower* arising from the agreement were the *borrower* to be treated as being solely responsible for obligations of the joint *borrowers* under the agreement.
 - (2) Where the *borrower* is a *partnership* or one or more members of an unincorporated association acting as agent for other such members, the members or *partners* may be treated as a single *borrower* for the purposes of the *creditworthiness assessment*.

Creditworthiness assessment where there is a guarantor

5.5A.32 **R**

- (1) This *rule* applies if, in relation to a *P2P agreement*:
 - (a) an *individual* other than the *borrower* (in this section referred to as 'the guarantor') is to provide a guarantee or an indemnity (or both) (in this *rule* and ■ CONC 5.2A.33G referred to as 'the guarantee'); and

5.5A.33

G

- (b) the *firm* is required to undertake a *creditworthiness assessment* in respect of the *borrower*.
- (2) Before the *P2P agreement* is made or the amount of *credit* provided under the agreement is significantly increased or a *credit limit* for *running-account credit* under the agreement is significantly increased, the *firm* must undertake a reasonable assessment of the potential for the guarantor's commitments in respect of the agreement to have a significant adverse impact on the guarantor's financial situation.
- (3) The *firm* must base the assessment under (2) on sufficient information:
 - (a) of which it is aware at the time the assessment is carried out;
 - (b) obtained, where appropriate, from the guarantor or from the *borrower* on the guarantor's behalf, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable assessment.
- (4) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.
- (1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the *borrower*, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.
- (2) If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last assessment under ■ CONC 5.5A.32R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.
- (3) In this *guidance*, references to payment refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).
- (4) The *firm* should, when carrying out an assessment under ■ CONC 5.5A.32R(2), have regard to ■ CONC 5.5A.9G to ■ CONC 5.5A.25G(1) (excluding ■ CONC 5.5A.10R, ■ CONC 5.5A.15R, ■ CONC 5.5A.17G(4), ■ CONC 5.5A.21R(3) and ■ CONC 5.5A.22G(1)), ■ CONC 5.5A.30G and ■ CONC 5.5A.31G but as if:
 - (a) each of those provisions that is a *rule* were *guidance* and as if 'should' appeared in that *rule* instead of 'must' or 'may';
 - (b) references to 'agreement' are to the 'guarantee';
 - (c) subject to (g) below, references to 'the *borrower*' are references to the 'guarantor';
 - (d) references to 'repayments' are references to 'payments';
 - (e) references to 'repay' are references to 'pay';
 - (f) references to the '*creditworthiness assessment*' are references to the assessment under ■ CONC 5.5A.32R(2);
 - (g) references in ■ CONC 5.5A.21R(2)(d) and ■ CONC 5.5A.24G to 'the *borrower*' are to the 'guarantor' as well as 'the *borrower*'; and

- (h) the reference in ■ CONC 5.5A.21R(2) to the factors listed in ■ CONC 5.5A.21R(3) is to the factors listed in ■ CONC 5.5A.33G (5).
- (5) The factors to which the *firm* should have regard for the purposes of ■ CONC 5.5A.21R(2) when deciding what steps should be taken to make the assessment under ■ CONC 5.5A.32R(2) a reasonable one include each of the following:
- (a) the total potential liability of the guarantor under the guarantee;
 - (b) the duration (or likely duration) of the guarantee;
 - (c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and
 - (d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.
- (6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor's financial circumstances, where known.
- (7) The provision of the guarantee, and the reasonable assessment of the guarantor under ■ CONC 5.5A.32R(2), do not remove or reduce the obligation on the *firm* to carry out a reasonable *creditworthiness assessment* of the *borrower*. *Firms* are reminded of the rule in ■ CONC 5.5A.15R that, in considering affordability risk for the *borrower*, a *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

Policies and procedures for creditworthiness assessment

5.5A.34

R

A *firm* must:

- (1) establish, implement and maintain clear and effective policies and procedures:
 - (a) to enable it to carry out *creditworthiness assessments* or assessments under ■ CONC 5.5A.32R(2); and
 - (b) setting out the principal factors it will take into account in carrying out *creditworthiness assessments* or assessments under ■ CONC 5.5A.32R(2);
- (2) set out the policies and procedures in (1) in writing, and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;
- (3) assess and periodically review:
 - (a) the effectiveness of the policies and procedures in (1); and
 - (b) the *firm's* compliance with those policies and procedures and with its obligations under ■ CONC 5.5A;

- (4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;
- (5) maintain a record, on paper or in electronic form, of each transaction where a *P2P agreement* is entered into, or where there is a significant increase in the amount of *credit* provided under a *P2P agreement* or a *credit limit for running-account credit* under a *P2P agreement*, sufficient to demonstrate that:
 - (a) a *creditworthiness assessment* or an assessment under ■ CONC 5.5A.32R(2) was carried out where required; and
 - (b) the *creditworthiness assessment* or the assessment under ■ CONC 5.5A.32R(2) was reasonable and was undertaken in accordance with ■ CONC 5.5A,

and so to enable the *FCA* to monitor the *firm's* compliance with its obligations under ■ CONC 5.5A; and
- (6) (other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

5.5A.35 G *Firms* are reminded of the *guidance* on record-keeping in ■ SYSC 9.1.4G and ■ 9.1.5G.

Unfair business practices.....

5.5A.36 R A *firm* must not complete some or all of those parts of an application for *credit* under a *P2P agreement* intended to be completed by the *borrower*, without the consent of the *borrower* or unless the *borrower* has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.5A.37 R A *firm* must inform the prospective *lender* under a *P2P agreement* where the *firm* knows or has reasonable cause to suspect that the *borrower* has not been truthful in completing the application for *credit* under the *P2P agreement* in relation to information relevant to the *creditworthiness assessment*.

5.5A.38 G An example of when a *firm* has reasonable cause to suspect that the *borrower* has not been truthful may be where information supplied by the *borrower* concerning income or employment status is clearly inconsistent with other information of which the *firm* is aware.

Chapter 5A

Cost cap for high-cost short-term credit



5A.1 Application, purpose and guidance

Application

5A.1.1

R

This chapter applies to:

- (1) a *firm* with respect to an agreement for *high-cost short-term credit* entered into on or after 2 January 2015; or
- (2) a *firm* with respect to an agreement entered into on or after 2 January 2015 which varies or supplements an agreement for *high-cost short-term credit* which imposes one or more charges; or
- (3) a *firm* with respect to the exercise of a contractual power on or after 2 January 2015 to vary or supplement an agreement for *high-cost short-term credit* which imposes one or more charges.

5A.1.2

G

- (1) A variation or supplement of, or an exercise of a contractual power to vary or supplement, an agreement for *high-cost short-term credit* made before 2 January 2015 will be covered by this chapter if it has the result that a new charge, or an increase in an existing charge, is payable.
- (2) An example of where a charge results from a variation or supplement is where the duration of an agreement made before 2 January 2015 is extended and a further charge by way of interest or otherwise is calculated by reference to the period of the extension. A variation or supplement which alters the address of the borrower stated in the agreement or which is followed by the *firm* permanently waiving any right to interest or charges which would otherwise be imposed or result does not fall within ■ CONC 5A.1.1 R (2) or ■ CONC 5A.1.1 R (3).
- (3) If this chapter applies to an agreement for *high-cost short-term credit* as a result of ■ CONC 5A.1.1 R (2) or ■ CONC 5A.1.1 R (3), charges imposed under the agreement before 2 January 2015 are to be included in the calculation of the total cost cap, the initial cost cap and the default cap. If charges imposed before 2 January 2015 exceed the total cost cap, the initial cost cap or the default cap, a variation or supplement of that credit agreement on or after 2 January 2015 that results in any additional charge is not permitted.

5A.1.3

G

Firms are reminded that, as a result of ■ GEN 2.2.1 R, the provisions of this chapter have to be interpreted in the light of their purpose.

Statutory context and purpose

5A.1.4 **G** Section 137C of the *Act* (FCA general rules: cost of credit and duration of credit agreements) as amended by the Financial Services (Banking Reform) Act 2013, places a duty on the *FCA* to make general rules with a view to securing an appropriate degree of protection for borrowers against excessive charges.

5A.1.5 **G** In accordance with that duty, the purpose of this chapter is:

- (1) to specify the descriptions of *regulated credit agreement* appearing to the *FCA* to involve the provision of high-cost short-term credit to which this chapter applies by using the definition of high-cost short-term credit set out in the *Glossary*;
- (2) to secure an appropriate degree of protection for borrowers against excessive charges; and
- (3) as a result, to restrict the charges for such high-cost short-term credit.

Guidance on application and interpretation

5A.1.6 **G** Examples of the sorts of charge (which expression is defined in ■ CONC 5A.6) applied in connection with the provision of *credit* covered by this chapter include, but are not limited to:

- (1) interest on the *credit* provided;
- (2) a charge related to late payment by, or default of, the borrower;
- (3) a charge related to the transmission of *credit* or for using a means of payment to or from the borrower;
- (4) a charge related to early repayment, or refinancing or changing the payment date or termination of the agreement;
- (5) a charge related to the application for, or drawing down of, *credit*;
- (6) a charge imposed by a *credit broker* in the same *group* or with whom the *lender* has arrangements to share the charge;
- (7) a charge for ancillary services related to the provision of *credit*; and
- (8) interest on any of the charges referred to in (1) to (7).

5A.1.7 **G** Certain other terms used in this chapter are defined in ■ CONC 5A.6.



5A.2 Prohibition from entering into agreements for high-cost short-term credit

Application

5A.2.1

R

This section applies to:

- (1) a *firm* with respect to *consumer credit lending*; or
- (2) a *firm* with respect to *credit broking*.

Cost caps: entering into agreements: Total cost cap

5A.2.2

R

A *firm* must not enter into an agreement for *high-cost short-term credit* that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of *credit* provided under the agreement.

Cost caps: entering into agreements: Initial cost cap

5A.2.3

R

A *firm* must not enter into an agreement for *high-cost short-term credit* that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of *credit* provided under the agreement calculated per *day* from the date on which the borrower draws down the *credit* until the date on which repayment of the *credit* is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, the date to which it is postponed.

5A.2.4

R

A reference to a charge in ■ CONC 5A.2.3 R (Initial cost cap) excludes a charge to which ■ CONC 5A.2.14 R (Default cap) applies.

5A.2.5

G

- (1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be provided for in an agreement in compliance with this cap can amount to 0.8% of the credit provided (determined in accordance with ■ CONC 5A.2.7 R) multiplied by the number of days from the date on which the borrower draws down the *credit* until the date indicated in ■ CONC 5A.2.3 R.
- (2) Where *credit* is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different

amounts of *credit* outstanding and the different durations for which the *credit* is provided.

Determining the amount of credit provided

5A.2.6 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■ CONC 5A.2.2 R** (Total cost cap) is the lesser of:

- (1) the amount of credit that the lender actually advances under the agreement; or
- (2) the *credit limit*.

5A.2.7 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■ CONC 5A.2.3 R** (Initial cost cap) is the amount of *credit* outstanding on the *day* in question under the agreement, disregarding for the purposes of that *rule* the effect of the borrower discharging all or part of the borrower's indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of *credit* before the date provided for in the agreement.

5A.2.8 **G** For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of *credit* repayable under an agreement for *high-cost short-term credit* (including where that early repayment is financed by a replacement agreement), the amount of *credit* outstanding on the *days* that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

5A.2.9 **G** For the purposes of this chapter, where a *lender* allows a borrower to make a number of drawdowns of *credit* (which may be expressed to be possible up to a specified amount of *credit*) but only with the *lender's* consent to each respective drawdown, each drawdown is a separate agreement for *high-cost short-term credit* and each agreement needs to be documented as a separate *regulated credit agreement* in accordance with the CCA and with the rest of *CONC*. This chapter applies to each drawdown as a separate agreement accordingly.

Refinancing

5A.2.10 **R** A *firm* must not enter into an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the replacement agreement provides for the payment by the borrower of one or more charges that, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with **■ CONC 5A.2.6 R**) under the combined effect of the replacement agreement and the earlier agreement.

5A.2.11 **R** A *firm* must not enter into an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the

replacement agreement provides for the payment by the borrower of one or more charges in connection with a breach of the agreement by the borrower that, taken together with such charges provided for by the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.2.12 **R** If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for *high-cost short-term credit* before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of **CONC 5A.2.10 R**.

5A.2.13 **R** A *firm* must not count any amount provided to the borrower to repay any amount of *credit* outstanding under an earlier agreement for *high-cost short-term credit* or any amount provided to pay any charge outstanding under the earlier agreement:

- (1) in calculating the amount of *credit* provided for the purposes of **CONC 5A.2.10 R**; or
- (2) where the *firm* replaces an earlier agreement for *high-cost short-term credit*, in calculating the amount of *credit* provided for the purposes of **CONC 5A.2.3 R** (Initial cost cap).

Default cap

5A.2.14 **R** A *firm* must not enter into an agreement for *high-cost short-term credit* if:

- (1) it provides for one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which alone or in combination (and whether in relation to one breach or cumulatively in relation to multiple breaches of the agreement) exceed or are capable of exceeding £15; or
- (2) it provides for the payment by the borrower of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per *day* from the date the charge is payable until the date the charge is paid; or
- (3) it provides for the payment by the borrower of one or more charges (except for a charge to which (1) or (2) applies), on any amount of *credit* provided which in breach of the agreement has not been repaid, that alone or in combination exceed or are capable of exceeding 0.8% of that amount calculated per *day* from the date of the breach until the date that the amount has been repaid.

5A.2.15 **G** *Firms* are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).

Connected agreements

5A.2.16 **R** Where a borrower or a prospective borrower pays a charge:

- (1) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which is in the same *group* as the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*; or
- (2) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which shares some or all of that charge with the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*;

the reference to a charge in **CONC 5A.2.2 R** (Total cost cap) and **CONC 5A.2.3 R** (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

5A.2.17 **R** Where a *person* imposes, on a borrower or a prospective borrower under an agreement for *high-cost short-term credit*, a charge for an ancillary service to the agreement, the reference to a charge in **CONC 5A.2.2 R** (Total cost cap), **CONC 5A.2.3 R** (Initial cost cap) and **CONC 5A.2.14 R** (Default cap) includes this charge and, if the charge is not provided for under the agreement for *high-cost short-term credit*, the agreement providing for the charge is a connected agreement.

5A.2.18 **G** Examples of the types of ancillary service to an agreement for *high-cost short-term credit* referred to in **CONC 5A.2.17 R** include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement.

Prohibition on compound interest

5A.2.19 **R** A *firm* must not enter into an agreement for *high-cost short-term credit*, which provides for a charge, by way of interest, other than a charge by way of simple interest.



5A.3 Prohibition from imposing charges under agreements for high-cost short-term credit

Application

5A.3.1

R

This section applies to:

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *debt administration*;
- (3) a *firm* with respect to *debt collecting*; or
- (4) a *firm* with respect to *operating an electronic system in relation to lending*.

Cost caps: imposition of charges etc.: Total cost cap

5A.3.2

R

A *firm* must not:

- (1) impose one or more charges, on a borrower under an agreement for *high-cost short-term credit*, that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of *credit* provided under the agreement;
- (2) arrange for or instruct another *person* to take the step described in (1).

Cost caps: imposition of charges etc.: Initial cost cap

5A.3.3

R

A *firm* must not impose one or more charges, on a borrower under an agreement for *high-cost short-term credit*, that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of *credit* provided under the agreement calculated per *day* from the date on which the borrower draws down the *credit* until the date on which repayment of the *credit* is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, the date to which it is postponed.

5A.3.4

R

A reference to a charge in ■ CONC 5A.3.3 R (Initial cost cap) excludes a charge to which ■ CONC 5A.3.18 R (Default cap) applies.

- 5A.3.5 **G** (1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be imposed in compliance with this cap can amount to 0.8% of the *credit* provided (determined in accordance with **CONC 5A.3.7 R**) multiplied by the number of days from the date on which the borrower draws down the *credit* until the date indicated in **CONC 5A.3.3 R**.
- (2) Where *credit* is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different amounts of *credit* outstanding and the different durations for which the *credit* is provided.

Determining the amount of credit provided

- 5A.3.6 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **CONC 5A.3.2 R** (Total cost cap) is the lesser of:
 - (1) the amount of *credit* that the *lender* actually advances under the agreement; or
 - (2) the *credit limit*.

5A.3.7 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **CONC 5A.3.3 R** (Initial cost cap) is the amount of *credit* outstanding on the *day* in question under the agreement, disregarding for the purposes of that *rule* the effect of the borrower discharging all or part of the borrower's indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of *credit* before the date provided for in the agreement.

5A.3.8 **G** For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of *credit* repayable under an agreement for *high-cost short-term credit* (including where that early repayment is financed by a replacement agreement), the amount of *credit* outstanding on the *days* that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

5A.3.9 **G** For the purposes of this chapter, where a *lender* allows a borrower to make a number of drawdowns of *credit* (which may be expressed to be possible up to a specified amount of *credit*) but only with the *lender's* consent to each respective drawdown, each drawdown is a separate agreement for *high-cost short-term credit* and each agreement needs to be documented as a separate *regulated credit agreement* in accordance with the CCA and with the rest of *CONC*. This chapter applies to each drawdown as a separate agreement accordingly.

Refinancing

5A.3.10 **R** A *firm* must not impose one or more charges by way of an agreement that varies or supplements an earlier agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower taken

together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.3.6 R) under the combined effect of the varying or supplemental agreement and the earlier agreement.

5A.3.11 **R** A *firm* must not impose one or more charges by exercising a contractual power to vary or supplement an agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower taken together with such charges imposed under the agreement or in a connected agreement to that agreement, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.3.6 R) under the agreement as varied or supplemented.

5A.3.12 **R** A *firm* must not impose one or more charges in connection with a breach of the agreement by the borrower by way of an agreement that varies or supplements an earlier agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower, taken together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.13 **R** A *firm* must not impose one or more charges in connection with a breach of the agreement by the borrower by exercising a contractual power to vary or supplement an agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower, taken together with such charges imposed under the agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.14 **R** A *firm* must not impose one or more charges under an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the charge or charges under the replacement agreement, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.3.6 R) under the combined effect of the replacement agreement and the earlier agreement.

5A.3.15 **R** A *firm* must not impose one or more charges in connection with a breach of the agreement by the borrower under an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the charge or charges under the replacement agreement payable by the borrower, taken together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.16 **R** If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for *high-cost short-term credit* before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of ■ CONC 5A.3.14 R.

5A.3.17 **R** A *firm* must not count any amount provided to the borrower to repay any amount of *credit* outstanding under an earlier agreement for *high-cost short-term credit* or any amount provided to pay any charge outstanding under the earlier agreement:

- (1) in calculating the amount of *credit* provided for the purposes of ■ CONC 5A.3.10 R, ■ CONC 5A.3.11 R or ■ CONC 5A.3.14 R; or
- (2) where the *firm* replaces an earlier agreement for *high-cost short-term credit*, in calculating the amount of *credit* provided for the purposes of ■ CONC 5A.3.3 R (Initial cost cap).

Default cap

5A.3.18 **R** A *firm* must not impose, on a borrower under an agreement for *high-cost short-term credit*:

- (1) one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which charges alone or in combination (and whether in relation to one breach or in combination relate to multiple breaches of the agreement) exceed or are capable of exceeding £15;
- (2) a charge by way of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per *day* from the date the charge is payable until the date the charge is paid;
- (3) one or more charges (except for a charge to which (1) or (2) applies), on any amount of *credit* provided which in breach of the agreement has not been repaid, that alone or in combination, exceed or are capable of exceeding 0.8% of that amount calculated per *day* from the date of the breach until that amount has been repaid.

5A.3.19 **G** *Firms* are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).

Connected agreements and guidance on charges before assignment

5A.3.20 **R** Where a borrower or a prospective borrower pays a charge:

- (1) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which is in the same *group* as the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*; or
- (2) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which shares some or all of that charge with the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*;

the reference to a charge in ■ CONC 5A.3.2 R (Total cost cap) and ■ CONC 5A.3.3 R (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

5A.3.21 **R** Where a *person* imposes on a borrower or a prospective borrower, under an agreement for *high-cost short-term credit*, a charge for an ancillary service to the agreement, the reference to a charge in ■ CONC 5A.3.2 R (Total cost cap), ■ CONC 5A.3.3 R (Initial cost cap) and ■ CONC 5A.3.18 R (Default cap) includes this charge and, if the charge is not provided for under the agreement for *high-cost short-term credit*, the agreement providing for the charge is a connected agreement.

5A.3.22 **G** Examples of the types of ancillary service to an agreement for *high-cost short-term credit* referred to in ■ CONC 5A.3.21 R include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement.

5A.3.23 **G** Where an agreement passes to another *firm* by assignment or by operation of law, any charges imposed in connection with the provision of *credit* under the agreement for *high-cost short-term credit* before the agreement passed to the *firm* are included within the charges referred to in ■ CONC 5A.3.

Prohibition on compound interest

5A.3.24 **R** A *firm* must not impose a charge under an agreement for *high-cost short-term credit*, which provides for a charge by way of interest, unless the *charge* is by way of simple interest.



5A.4 Cost cap for operating an electronic system in relation to lending

Application

5A.4.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a borrower or a prospective borrower under an agreement for *high-cost short-term credit*.

Cost cap rules for operating electronic systems in relation to lending: Total cost cap

5A.4.2 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of *credit* provided under the agreement.

Cost cap rules for operating electronic systems in relation to lending: Initial cost cap

5A.4.3 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of *credit* provided under the agreement calculated per *day* from the date on which the borrower draws down the *credit* until the date on which repayment of the *credit* is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, it is the date to which it is postponed.

5A.4.4 **R** A reference to a charge in **■ CONC 5A.4.3 R** excludes a charge to which **■ CONC 5A.4.14 R** (Default cap) applies.

5A.4.5 **G**

- (1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be provided for in an agreement in compliance with this cap can amount to 0.8% of the credit provided (determined in accordance with **■ CONC 5A.4.7 R**) multiplied by the number of days from the date on which the borrower draws down the *credit* until the date indicated in **■ CONC 5A.4.3 R**.
- (2) Where *credit* is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different

amounts of *credit* outstanding and the different durations for which the *credit* is provided.

Determining the amount of credit provided

5A.4.6 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■** CONC 5A.4.2 R (Total cost cap) is the lesser of:

- (1) the amount of *credit* that the *lender* actually advances under the agreement; or
- (2) the *credit limit*.

5A.4.7 **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■** CONC 5A.4.3 R (Initial cost cap) is the amount of *credit* outstanding on the *day* in question under the agreement, disregarding for the purposes of that rule the effect of the borrower discharging all or part of the borrower's indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of *credit* before the date provided for in the agreement.

5A.4.8 **G** For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of *credit* repayable under an agreement for *high-cost short-term credit* (including where that early repayment is financed by a replacement agreement), the amount of *credit* outstanding on the *days* that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

5A.4.9 **G** For the purposes of this chapter, where a *lender* allows a borrower to make a number of drawdowns of *credit* (which may be expressed to be possible up to a specified amount of *credit*) but only with the *lender's* consent to each respective drawdown, each drawdown is a separate agreement for *high-cost short-term credit* and, where applicable, each agreement needs to be documented as a separate *regulated credit agreement* in accordance with the CCA and with the rest of CONC. This chapter applies to each drawdown as a separate agreement accordingly.

Refinancing

5A.4.10 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the replacement agreement provides for the payment by the borrower of one or more charges that, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with **■** CONC 5A.4.6 R) under the combined effect of the replacement agreement and the earlier agreement.

5A.4.11 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* that replaces an earlier agreement

for *high-cost short-term credit* if the replacement agreement provides for the payment by the borrower of one or more charges in connection with a breach of the agreement by the borrower that, taken together with such charges provided for by the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.4.12 **R** If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for *high-cost short-term credit* before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of **■ CONC 5A.4.10 R**.

5A.4.13 **R** No amount is to be counted which is provided to the borrower to repay any amount of *credit* outstanding under an earlier agreement for *high-cost short-term credit* or any amount provided to pay any charge outstanding under the earlier agreement:

- (1) in calculating the amount of *credit* provided for the purposes of **■ CONC 5A.4.10 R**; or
- (2) where an earlier agreement for *high-cost short-term credit* is replaced, in calculating the amount of *credit* provided for the purposes of **■ CONC 5A.4.3 R** (Initial cost cap).

Default cap

5A.4.14 **R** A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* if:

- (1) it provides for one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which alone or in combination (and whether in relation to one breach or cumulatively in relation to multiple breaches of the agreement) exceed or are capable of exceeding £15; or
- (2) it provides for the payment by the borrower of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per *day* from the date the charge is payable until the date the charge is paid; or
- (3) it provides for the payment by the borrower of one or more charges (except for a charge to which (1) or (2) applies), on any amount of *credit* provided which in breach of the agreement has not been repaid, that alone or in combination exceed or are capable of exceeding 0.8% of that amount calculated per *day* from the date of the breach until the date that the amount has been repaid.

5A.4.15 **G** *Firms* are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).

Connected agreements

5A.4.16 **R**

Where a borrower or a prospective borrower pays a charge:

- (1) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which is in the same *group* as the *firm* which is to facilitate, facilitates or has facilitated the provision of *credit* under the agreement for *high-cost short-term credit*; or
- (2) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which shares some or all of that charge with the *firm* which is to facilitate, facilitates or has facilitated the provision of *credit* under the agreement for *high-cost short-term credit*;

the reference to a charge in ■ CONC 5A.4.2 R (Total cost cap) and ■ CONC 5A.4.3 R (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

5A.4.17 **R**

Where a *person* imposes, on a borrower or a prospective borrower under an agreement for *high-cost short-term credit*, a charge for an ancillary service to the agreement, the reference to a charge in ■ CONC 5A.4.2 R (Total cost cap), ■ CONC 5A.4.3 R (Initial cost cap) and ■ CONC 5A.4.14 R (Default cap) includes this charge and, if the charge is not provided for under the agreement for *high-cost short-term credit*, the agreement providing for the charge is a connected agreement.

5A.4.18 **G**

Examples of the types of ancillary service to an agreement for *high-cost short-term credit* referred to in ■ CONC 5A.4.17 R include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement.

Prohibition on compound interest

5A.4.19 **R**

A *firm* must not facilitate an *individual* becoming a borrower under an agreement for *high-cost short-term credit* which provides for a charge by way of interest, unless the charge is by way of simple interest.



5A.5 Consequences of contravention of the cost caps

Application

5A.5.1 **R** This section applies to:

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *debt administration*;
- (3) a *firm* with respect to *debt collecting*; or
- (4) a *firm* with respect to *operating an electronic system in relation to lending*.

Contravention of cost caps and unenforceability of agreements and obligations

5A.5.2 **R** Where:

- (1) a *firm* enters into an agreement for *high-cost short-term credit* in contravention of a rule in ■ CONC 5A.2; or
- (2) a *firm* facilitates an *individual* becoming a borrower under an agreement for *high-cost short-term credit* in contravention of a rule in ■ CONC 5A.4; or
- (3) a *firm* within ■ CONC 5A.5.1 R (1) imposes a charge in contravention of a rule in ■ CONC 5A.3; or
- (4) a *firm* within ■ CONC 5A.5.1 R (4) imposes a charge on behalf of a lender in contravention of a rule in ■ CONC 5A.3; or
- (5) a *firm* within ■ CONC 5A.5.1 R (2) or ■ CONC 5A.5.1 R (3) on behalf of a *firm* within ■ CONC 5A.5.1 R (1) or ■ CONC 5A.5.1 R (4) imposes a charge in contravention of a rule in ■ CONC 5A.3:
 - (a) the agreement is unenforceable against the borrower; and
 - (b) the borrower may choose not to perform the agreement and if that is the case:
 - (i) at the written or oral request of the borrower, the *lender* must, as soon as reasonably practicable following the request and in any case within 7 days of the request, repay to the borrower any charges paid by the borrower under the

- agreement or confirm by notice in writing to the borrower that there are no charges to pay;
- (ii) where the *lender* complies with (i), the borrower must repay any *credit* received by the borrower under the agreement to the *lender* within a reasonable period from the day on which the charges in (i) are received by the borrower or the day on which the notice of confirmation in (i) is received; and
 - (iii) in any case, the *lender* must not demand payment of the sum in (ii) in less than 30 days from the day in (ii).
- 5A.5.3** **R** Where an agreement for *high-cost short-term credit* provides for or imposes one or more charges that alone or in combination exceed or are capable of exceeding an amount set out in **■ CONC 5A.2** or **■ CONC 5A.3**:
- (1) the agreement is unenforceable against the borrower to the extent that such a charge or such charges exceed or are capable of exceeding that amount; and
 - (2) the borrower may choose not to perform the agreement to that extent and if that is the case at the written or oral request of the borrower, the *lender* must, as soon as reasonably practicable following the request and in any case within 7 *days* of the request, repay to the borrower any charges to the extent in (1) paid by the borrower under the agreement or confirm by notice in writing to the borrower that there are no charges to that extent to pay.
- 5A.5.4** **G** Once the *lender* has repaid the charges to the borrower or has confirmed there are no charges to repay the borrower is then under a statutory obligation to repay any *credit* received under the agreement.
- 5A.5.5** **G** What is a reasonable period for the borrower to repay the *credit* depends on the circumstances of the case, including the terms for repayment under the agreement. Where the agreement provided for repayment in instalments, the *firm* should consider issuing the borrower with a schedule for repayment under which the *firm* would collect the *credit* in instalments at the same periodic intervals as under the agreement.
- 5A.5.6** **G** *Firms* are reminded that Principle 6 applies to how they deal with borrowers in relation to repayment of the *credit* required by **■ CONC 5A.5.2 R**. The *FCA* would expect firms to take into account the financial situation of the borrower in considering what is a reasonable period for repayment.
- 5A.5.7** **G** **■ CONC 5A.5.3 R** is a residual provision that applies to a *firm* established in the *UK* which carries on *debt administration* or *debt collection*, but where the *rules* in **■ CONC 5A** do not apply to a *lender* because the *lender* is established outside the *UK* and provides *electronic commerce activities* into the *UK*. Where a borrower gives notice to the *lender* referred to in **■ CONC 5A.5.3 R**, only charges which exceed the amounts set out in **■ CONC 5A.2** or **■ CONC 5A.3** are void. The borrower remains under a contractual obligation to repay the *credit* received under the agreement and any charges under the agreement permitted by those provisions.

5A.6 Interpretation

5A.6.1

R

In this chapter:

- (1) "ancillary service" is a service in connection with the provision of *credit* under the agreement for *high-cost short-term credit* and includes, but not limited to, an insurance or payment protection policy;
- (2) "borrower" is an *individual* and includes:
 - (a) any person providing a guarantee or indemnity under the *regulated credit agreement*; and
 - (b) a person to whom the rights and duties of the borrower under the *regulated credit agreement* or of a person falling within (a) have passed by assignment or operation of law;
- (3) "charge" is a charge payable, by way of interest or otherwise, in connection with the provision of *credit* under the *regulated credit agreement*, whether or not the agreement itself makes provision for it and whether or not the *person* to whom it is payable is a party to the *regulated credit agreement* or an *authorised person*;
- (4) "connected agreement" is an agreement which provides for a charge within ■ CONC 5A.2.16 R, ■ CONC 5A.2.17 R, ■ CONC 5A.3.20 R, ■ CONC 5A.3.21 R, ■ CONC 5A.4.16 R and ■ CONC 5A.4.17 R;
- (5) "impose one or more charges on a borrower under an agreement for *high-cost short-term credit*" includes taking the following actions under the agreement:
 - (a) taking steps to perform duties, or exercise or enforce rights, on behalf of a *lender* in relation to a charge; or in relation to a *firm* with respect to *operating an electronic system in relation to lending*, exercise or enforce rights, on behalf of a *lender* in relation to one or more charges;
 - (b) taking steps to procure the payment of a debt due in relation to one or more charges;
 - (c) undertaking to receive payments in respect of interest due under an agreement for *high-cost short-term credit* and make payments in respect of interest due under the agreement to the *lender*;
 - (d) arranging for or instructing another *person* to take any of the steps described in (a), (b) or (c); or
 - (e) exercising the rights of the *lender* in a way that enables the imposition on the borrower of one or more charges.

5A

5A.6.2

G

The meaning of the expression “impose one or more charges on a borrower under an agreement for *high-cost short-term credit*” is set out in ■ CONC 5A.6.1 R (5). The meaning of “impose” in relation to a charge in this chapter is broad and includes, but is not limited to, situations including where a *firm*:

- (1) enters into an agreement containing a clause obliging the borrower to pay a charge;
- (2) varies or supplements an agreement and this has the result that there is:
 - (a) an increase in the amount of a charge; or
 - (b) where the amount of a charge is determined by reference to a period of time, an increase in the period of time to which a charge applies;
- (3) adds a charge to a borrower’s account;
- (4) communicates with a borrower demanding payment of a charge or indicating that the borrower is, will be or may be obliged to pay the charge; and
- (5) is *operating an electronic system in relation to lending*, and it does any of activities in (1) to (4) for a *lender*.

5A

Chapter 5B

Cost cap for rent-to-own agreements



5B.1 Application and guidance

Application

5B.1.1

R

This chapter applies:

- (1) to a **RTO firm** with respect to any **RTO agreement** that has been entered into on or after one of the following dates:
 - (a) for a **RTO agreement** that relates to *goods* that have not been offered or made available to *consumers* by the **RTO firm** immediately before 1 April 2019, that date; or
 - (b) for a **RTO agreement** that relates to any other *goods*, the earliest of the following dates:
 - (i) any date on or after 1 April 2019 on which the **RTO firm** has increased the *cash price* of the *goods* to which the agreement relates; or
 - (ii) 1 July 2019.

- (2) to a **RTO firm** with respect to an arrangement to vary or supplement an existing **RTO agreement** so as to supply one or more additional or different *goods* under that agreement, that has been entered into on or after one of the following dates:
 - (a) for an arrangement that relates to additional or different *goods* that have not been offered or made available to *consumers* by the **RTO firm** immediately before 1 April 2019, that date; or
 - (b) for an arrangement that relates to any other additional or different *goods*, the earliest of the following dates:

any date on or after 1 April 2019 on which the **RTO firm** has increased the *cash price* of the additional or different *goods*;
or

1 July 2019.

- (3) Where an **RTO firm** is a *micro-enterprise* the references in ■ CONC 5B.1.1R(1)(b)(ii) and ■ CONC 5B.1.1R(2)(b)(ii) to 1 July 2019 are to be read instead as references to 1 October 2019, and all other references to those provisions are to be read accordingly.

5B.1.2

G

- (1) This chapter applies to **RTO firms** when they are entering into new **RTO agreements**, and when they are varying or supplementing an existing **RTO agreements** so as to supply additional or different *goods* under the agreement. This chapter does not therefore apply where

the variation or supplementation of an existing **RTO agreement** does not involve the supply of additional or different *goods*.

- (2) Where ■ CONC 5B.1.1R(2) applies, this chapter does not apply in relation to *goods* that had been supplied under an existing **RTO agreement** prior to the relevant date as provided in ■ CONC 5B.1.1R(2)(a) and ■ (b).

5B.1.3

G

RTO firms are reminded that, as set out in ■ GEN 2.2.1R, the provisions of this chapter have to be interpreted in light of their purpose.

Guidance on application and interpretation.....

5B.1.4

G

In this chapter, a word or term in bold (other than in headings and titles) has the meaning given in ■ CONC 5B.7.



5B.2 Prohibition on RTO firms from entering into RTO agreements

Entering into, varying or supplementing agreements: requirements as to the cash price of new goods

- 5B.2.1** **R** A **RTO firm** must not enter into, vary or supplement a **RTO agreement** where the *cash price* of the *goods* (which are not second-hand *goods*) supplied under the agreement exceeds the **benchmarked price**.
- 5B.2.2** **R** Except where **CONC 5B.2.4R(1)** applies, a **RTO firm** must establish the **benchmarked price** by taking the following steps:
- (1) The **RTO firm** must find three benchmarking *cash prices*.
 - (2) A benchmarking *cash price*:
 - (a) must be a *cash price* at which the *goods* are currently offered or available for sale to *consumers* in the *United Kingdom*, but not by another **RTO firm** or an **associate** of the **RTO firm** establishing the **benchmarked price**;
 - (b) save where paragraph (3) applies, must be for the same *goods* as the **RTO firm** intends to supply under the **RTO agreement**;
 - (c) where paragraph (3) applies, must be for *goods* comparable, by reference to any features or characteristics of the *goods* that might reasonably be expected to affect the *cash price*, to those which the **RTO firm** intends to supply under the **RTO agreement**; and
 - (d) may be a *cash price* charged by a **retail revolving credit business** provided the other two benchmarking *cash prices* are not.
 - (3) This paragraph applies where, following a reasonable search of the market, the **RTO firm** has been unable to find three benchmarking *cash prices* that satisfy the requirements in paragraph (2)(b).
 - (4) Where paragraph (2)(d) applies, the median of the three benchmarking *cash prices* is the **benchmarked price**.
 - (5) Where paragraph (2)(d) does not apply, the highest of the three benchmarking *cash prices* is the **benchmarked price**.
 - (6) Each item of *goods* being supplied under one **RTO agreement** must be benchmarked individually except where the **RTO firm** is offering a bundle of *goods* to be supplied for one *cash price*.

- (7) Except where paragraph (8) applies, where a bundle of *goods* is being supplied under one **RTO agreement** for one *cash price*, the **RTO firm** must benchmark against other *goods* supplied as bundles, in the way described in paragraphs (1) and (2) above.
- (8) This paragraph applies where:
 - (a) a **RTO firm** wishes to supply a bundle of *goods* under one **RTO agreement** for one *cash price*;
 - (b) the **RTO firm** has been unable to find three benchmarking *cash prices* based on the same bundle of *goods*; and
 - (c) any comparable bundle of *goods* that the **RTO firm** would need to rely upon to establish a **benchmarked price** contains one or more *goods* of significantly different value from those in the bundle that the **RTO firm** wishes to supply.
- (9) Where paragraph (8) applies the **RTO firm** must:
 - (a) separately benchmark each item in accordance with paragraphs (1) and (2) above; and
 - (b) set separate *cash prices* for each of those items.
- (10) Where a **RTO firm** reasonably considers that a particular *cash price* is so far outside the range of *cash prices* it has found that no reasonably-informed *UK consumer* is likely to pay that *cash price*, the **RTO firm** must not use that *cash price* as a benchmarking price.
- (11) In assessing whether a particular *cash price* is so far outside the range of *cash prices* it has found that no reasonably-informed *UK consumer* is likely to pay that *cash price* a **RTO firm** must, in particular, consider:
 - (a) the difference between that *cash price* and the other two benchmarking *cash prices* the **RTO firm** has found;
 - (b) evidence suggesting that the *cash price* is out of date, for example where the item is no longer in stock; and
 - (c) any other factors suggesting that the seller does not expect to sell the *goods* at that *cash price*.

5B.2.3

G

- (1) New *goods* are *goods* which are not second-hand *goods* and include, for example, ex-display *goods*.
- (2) The range of features which **RTO firms** might consider under **CONC 5B.2.2R(2)(c)** when identifying comparable *goods* includes brand, quality, functionality, performance, size and colour, but only where these features could reasonably be expected to affect the *cash price*.
- (3) In relation to **CONC 5B.2.2R(10)**, examples of cases where the *FCA* would expect a **RTO firm** to exclude a *cash price* include, but are not limited to:
 - (a) *cash prices* that have been set primarily for a non-UK market; and
 - (b) *cash prices* that have clearly been set in error.

Establishing a benchmarked price for goods that will be new to the UK market

5B.2.4 **R**

- (1) This paragraph applies to *goods*:
 - (a) that will not be sold exclusively by a **RTO firm**;
 - (b) that are not currently offered for sale on the *UK* market; and
 - (c) that have features so technologically different from those of *goods* currently for sale on the *UK* market that it is not possible to identify *goods* that are genuinely comparable.
- (2) Where paragraph (1) applies, a **RTO firm** must establish a **benchmarked price** for the *goods* that is reasonable, having regard in particular to:
 - (a) any price at which the *goods* have been advertised in the *United Kingdom* prior to launch;
 - (b) any recommended retail price for the *goods*;
 - (c) any other recommended price for the *goods* that has been provided by a supplier;
 - (d) where the *goods* replace an existing model:
 - (i) the *cash price* at which the existing model was first offered for sale in the *United Kingdom*; and
 - (ii) where the existing model replaced a previous model, the difference between the *cash price* of the previous model and the *cash price* of the existing model at the time the existing model was first offered for sale.

Timing

5B.2.5 **R**

- A **RTO firm** must establish the **benchmarked price** for goods:
- (1) by the time it offers to supply the *goods* under a **RTO agreement** for the first time;
 - (2) by the time it increases the *cash price* at which it offers to supply the *goods* under a **RTO agreement**;
 - (3) where a **benchmarked price** has been established under **CONC 5B.2.4R(2)**, by the end of the period of 3 *months* that begins on the day on which the *goods* were first offered for sale on the *UK* market; and
 - (4) no later than 12 *months* after the last time it established a **benchmarked price** in accordance with any provision of this *rule*.

5B.2.6 **G**

The fact that a **benchmarked price** for *goods* has been established before the coming into force of **CONC 5B** does not prevent it satisfying the requirements of **CONC 5B.2.5R(1)**. Subsequent benchmarking then has to be carried out in accordance with **5B.2.5R(2)**, (3) or (4) in the normal way.

Entering into, varying or supplementing agreements: requirements as to the cash price of delivery and installation of goods

- 5B.2.7** **R** A RTO firm must not enter into:
- (1) a RTO agreement;
 - (2) an arrangement to vary or supplement an existing RTO agreement by the supply of additional or different goods under that agreement; or
 - (3) a connected agreement,
- where the *cash price* for delivery and/or the *cash price* for installation exceeds the relevant **benchmarked price**.
- 5B.2.8** **R**
- (1) A RTO firm must establish the **benchmarked price** for delivery or installation of *goods* supplied under a RTO agreement by selecting the *cash prices* charged for, as relevant, delivery or installation of the same category of *goods* by three retailers (who must not include a RTO firm or an associate of the RTO firm establishing the **benchmarked price**) and taking the median of those prices.
 - (2) A RTO firm must establish the **benchmarked price** for delivery and/or installation:
 - (a) by the time it offers to supply the relevant *goods* under a RTO agreement for the first time;
 - (b) by the time it increases the *cash price* at which it offers to provide delivery or installation in relation to *goods* supplied under a RTO agreement; and
 - (c) no later than 12 months after the last time it established a **benchmarked price** in accordance with any provision of this rule.
- 5B.2.9** **G** The fact that a **benchmarked price** for delivery and/or installation has been established before the coming into force of ■ CONC 5B does not prevent it satisfying the requirements of ■ CONC 5B.2.8R(2)(a).
- 5B.2.10** **G**
- (1) The FCA does not expect RTO firms to identify the *cash prices* for delivery and/or installation of identical goods. It will be sufficient for RTO firms to select *cash prices* for the delivery and/or installation of the category of *goods*. For example, RTO firms would need to find *cash prices* for the delivery and/or installation of washing machines but not for a particular model of washing machine.
 - (2) When selecting benchmarking *cash prices* for delivery, RTO firms should select prices which apply in comparable circumstances to those that apply to the RTO firm, for example in terms of distance or timing.

Entering into, varying or supplementing agreements: total cost of credit cap

5B.2.11 **R**

- (1) A **RTO firm** must not enter into a **RTO agreement** for *goods* that provides for the payment by the *borrower* of one or more **charges** that, alone or in combination with any other **charge** under the **RTO agreement** or a **connected agreement**, exceed or are capable of exceeding the *cash price* of the *goods* plus, where relevant:
 - (a) the *cash price* for delivery;
 - (b) the *cash price* for installation; and
 - (c) the *cash price* of *goods* or services supplied under a **connected agreement**.

- (2) A **RTO firm** must not enter into an arrangement to vary or supplement a **RTO agreement** by the supply of additional or different *goods*, where the arrangement provides for the payment by the *borrower*, in relation to the additional or different *goods*, of one or more **charges** that, alone or in combination with any other **charge** under the **RTO agreement** or a **connected agreement**, exceed or are capable of exceeding the *cash price* of the additional or different *goods* supplied, plus, where relevant:
 - (a) the *cash price* for delivery;
 - (b) the *cash price* for installation; and
 - (c) the *cash price* of *goods* or services supplied by a **connected agreement**.

5B.2.12 **G**

Where more than one item of *goods* and/or services is supplied under one **RTO agreement**, the total amount of the **charges** that may be payable by the *borrower* under that agreement should be calculated with reference to the sum of the *cash price* of each of the *goods* and, where relevant, services. For example, where a **RTO agreement** covers the supply of a washing machine and dryer, and delivery and installation of both:

Washing machine:	<i>cash price</i>	=	£200
Dryer:	<i>cash price</i>	=	£250
Delivery:	<i>cash price total</i>	=	£30
Installation:	<i>cash price total</i>	=	£20
The sum of the <i>cash prices</i>		=	£500

The total amount of **charges** that may, in addition, be payable by the *borrower* must not exceed £500.



5B.3 Anti-avoidance

5B.3.1

R

RTO firms must not attempt to recover revenue that may be lost due to compliance with the total cost of credit cap rules through the price for other goods or services provided by the RTO firm in connection with a RTO agreement.

5B.3.2

G

- (1) For example, RTO firms should not seek to increase the price of theft or accidental damage insurance, or extended warranties in order to recover revenue lost due to the cost cap rules.
- (2) RTO firms are also reminded of the rule in ■ CONC 7.7.5R which states that firms must not impose charges on customers in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs to the firm.

5B



5B.4 Policies and procedures for establishing benchmarked prices

5B.4.1

R

A RTO firm must:

- (1) establish, implement and maintain clear and effective policies and procedures to enable it to establish **benchmark**ed prices under ■ CONC 5B.2.2R, ■ CONC 5B.2.4R and ■ CONC 5B.2.8R;
- (2) set out the policies and procedures in (1) in writing, and have them approved by its *governing body* or *senior personnel*;
- (3) assess and periodically review:
 - (a) the effectiveness of the policies and procedures in (1); and
 - (b) the **RTO firm's** compliance with those policies and procedures and with its obligations under ■ CONC 5B; and
- (4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the **RTO firm's** compliance with its obligations.

Obligations in competition law

5B.4.2

G

RTO firms are reminded of their obligations to ensure compliance with competition law (including the prohibitions against anti-competitive agreements and abuse of a dominant position in Chapters 1 and 2 of the Competition Act 1998 and the criminal cartel offence in Section 188 of the Enterprise Act 2002 as amended by the Enterprise and Regulatory Reform Act 2013). Those obligations include:

- (1) not entering into any agreements with other firms where the agreement has as its object or effect an appreciable prevention, restriction or distortion of competition – for example to agree sale prices or to allocate customers. For example, if a **RTO firm** director called another **RTO firm** or a non-**RTO firm** and agreed to sell their products at a certain price, this would be restrictive of competition and illegal. The individuals involved could also be prosecuted for the criminal cartel offence; and
- (2) not disclosing to, or accepting from, competitors any commercially sensitive information such as pricing or price planning, customer or market information or company strategy. For example, if a **RTO firm's** employee met or called another **RTO firm's** employee to find out any current or future pricing information whatsoever, that was not otherwise publicly available, whether for the purpose of attempting

to fulfil any obligation under these *rules* or not, that could be illegal anti-competitive activity, even if the recipient of the information stayed silent.

5B.4.3

G

RTO firms should also note the following points.

- (1) The disclosure or receipt of commercially sensitive information may amount to a breach of competition law and could lead to infringement findings and fines not only in relation to the firm disclosing the information but also in relation to other firms receiving the information.
- (2) A person commits the criminal cartel offence if they agree with one or more others to make or implement (or cause to be made or implemented) certain prohibited cartel arrangements relating to two or more businesses, namely price fixing, market sharing, bid-rigging, and limiting output. The maximum penalty on conviction for the criminal cartel offence is five years imprisonment and/or an unlimited fine.
- (3) It is the responsibility of each firm to assess its own position under competition law (for example by taking its own legal advice) and to ensure all its staff are compliant with competition law and in particular that they know what is, and is not, lawful practice.
- (4) Relevant guidance on competition law has been published by the Competition and Markets Authority.

[**Note:** for example, see:

Competition Law Risk a Short Guide at:

<https://www.gov.uk/government/publications/competition-law-risk-a-short-guide>

Limiting risk in relation to competitors' information at:

<https://www.gov.uk/government/publications/limiting-risk-in-relation-to-competitors-information>

Quick Guide to Complying with Competition Law at: [https://www.gov.uk/government/publications/how-small-businesses-can-comply-with-competition-law.](https://www.gov.uk/government/publications/how-small-businesses-can-comply-with-competition-law)]

5B.5 Record keeping

5B

5B.5.1

G

RTO firms are reminded of their obligations in ■ SYSC 9.1.1R to keep orderly records, which must be sufficient to enable the *FCA* to monitor the *firm's* compliance with the requirements of the *regulatory system*. Records which the *FCA* would consider to be sufficient to show compliance with the benchmarking requirements in ■ CONC 5B include:

- (1) point-in-time evidence of other benchmarking *cash prices* such as screengrabs or outputs of third party benchmarking data, together with evidence establishing the point in time to which it relates;
- (2) evidence to show how the **RTO firm** took reasonable steps to ascertain whether the same item of *goods* or bundle of *goods* was available for sale by other retailers; and
- (3) evidence to show how the **RTO firm** established that *goods* benchmarked against were comparable to those supplied by the **RTO firm**.

5B.6 Consequences of contravention of the total cost of credit cap

5B.6.1 **R** Where a **RTO firm** enters into a **RTO agreement** in contravention of a *rule* in **■ CONC 5B.2.11R**:

an obligation in or under a **RTO agreement** that requires the *borrower* to pay **charges** which in total would exceed the total cost of credit cap, is unenforceable in its entirety; and

the *borrower* is entitled to recover any amount paid in **charges**. If that is the case, at the written or oral request of the *borrower*, the **RTO firm** must, as soon as reasonably practicable following the request and in any case within 7 *days* of the request, repay to the *borrower* any **charges** paid by the *borrower* under or in connection with the **RTO agreement**.

5B.6.2 **G** Taking the example in **■ CONC 5B.2.12G**, if the agreement provided that the total amount of **charges** that may be payable by the *borrower* were £600 (so exceeding the sum of the *cash prices* which was £500), the obligation to pay the £600 **charges** would be unenforceable, and where a *customer* had paid part or all of the £600, they would be entitled to have the amount of **charges** they had paid refunded by the **RTO firm**.

5B.7 Interpretation

5B

5B.7.1

R

In this chapter, words or terms used in ■ CONC 5B which appear in bold (other than headings and titles) have the following meanings:

- (1) **“associate”** means any *person* whose business or domestic relationship with a **RTO firm**, whether directly or indirectly, might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with *consumers*;
- (2) **“benchmarked price”** means a price calculated in accordance with ■ CONC 5B.2.2R, ■ CONC 5B.2.4R or ■ CONC 5B.2.8R;
- (3) **“charge”** is a charge payable, by way of interest or otherwise, in connection with the provision of *credit* under a **RTO agreement**, whether or not the agreement itself makes provision for this, and whether or not the *person* to whom it is payable is a party to the **RTO agreement** or an *authorised person*, and which would form part of *the total charge for credit*;
- (4) **“connected agreement”** is an agreement:
 - (a) for delivery and/or installation of *goods* supplied under a **RTO agreement**; and/or
 - (b) which provides for a payment in connection with a **RTO agreement** where that payment would form part of the *total charge for credit*;
- (5) **“household goods”** means *goods* which are normally found in a residential home and includes but is not limited to furniture, kitchen appliances (such as cookers, washing machines and dryers, microwaves, refrigerators and freezers), electronic and technological goods (such as vacuum cleaners, televisions and accessories, music systems and accessories, games consoles and accessories, computers, tablets and accessories, and mobile phones);
- (6) **“retail revolving credit business”** means a *person*:
 - (a) whose business comprises or includes the sale of *goods* financed by a form of *retail revolving credit*; and
 - (b) whose business does not comprise or include the sale of such goods from one or more physical stores.
- (7) **“RTO agreement”** means a *regulated credit agreement* which is a *hire-purchase or conditional sale agreement* that supplies one or

more items of **household goods**, but excluding those in relation to *goods* acquired principally for business purposes; and

- (8) “**RTO firm**” means a *firm* whose business comprises or includes the *regulated activity of entering into a regulated credit agreement as lender and/or exercising or having the right to exercise the lender’s rights and duties under a regulated credit agreement*, in relation to one or more **RTO agreements**, as defined in ■ CONC 5B.7.1R(7) and in relation to more than one category of **household goods**.

Chapter 5C

Overdraft pricing



5C.1 Application and purpose

Purpose

5C.1.1

G

The purpose of this chapter is to:

- (1) require *firms* to implement and maintain overdraft charging structures that are simple, transparent and capable of easy comparison; and
- (2) forbid *firms* from obliging a *customer* to pay a rate of interest for an unarranged overdraft which exceeds the rate of interest for an arranged overdraft that is relevant to that *customer*.

Who and what?

5C.1.2

R

- (1) Subject to (2), this chapter applies to a *firm* with respect to *consumer credit lending* and connected activities in relation to arranged overdrafts and unarranged overdrafts associated with personal current accounts.
- (2) This chapter does not apply to:
 - (a) a *firm* if all personal current accounts provided or offered by the *firm* are excluded accounts;
 - (b) a *firm* in respect of any personal current account which may be used for a currency other than a currency of the *United Kingdom*;
 - (c) a private bank; or
 - (d) a *credit union*.

Where?

5C.1.3

R

This chapter applies to a *firm* with respect to activities carried on from an establishment maintained by it in the *United Kingdom*.

5C.2 Charges for overdrafts to be interest rates

5C.2.1

R

- (1) A *firm* must not:
 - (a) enter into an agreement with a *customer* that provides for an arranged overdraft charge or an unarranged overdraft charge; or
 - (b) impose on a *customer* an arranged overdraft charge or an unarranged overdraft charge,
unless the conditions in (2) to (7) are satisfied.
- (2) The charge must be a rate of interest expressed as a percentage applied on an annual basis to the relevant balance of arranged overdraft or unarranged overdraft (as the case may be).
- (3) The rate of interest that applies to any given balance of arranged overdraft relating to a personal current account must either be zero or the same as the rate of interest that applies to any other balance of arranged overdraft in respect of that personal current account.
- (4) The rate of interest that applies to any given balance of unarranged overdraft relating to a personal current account must either be zero or the same as the rate of interest that applies to any other balance of unarranged overdraft in respect of that personal current account.
- (5) A *firm* must not require a *customer* to pay more than one arranged overdraft charge or more than one unarranged overdraft charge arising out of the same event.
- (6) Where a *customer* has an arranged overdraft, in relation to a personal current account, to which a rate of interest above zero applies, any unarranged overdraft charge imposed on the *customer* in relation to that personal current account must also consist of a rate of interest computed, structured and presented in an identical manner (although the level of the rate of interest that applies to the unarranged overdraft may be lower).
- (7) If, in relation to an overdraft, a *firm* indicates to a *customer* that no interest is payable on the overdraft balance, or a tranche of the overdraft balance up to a specified amount, the *firm* must not have a contractual right to impose interest referable to that overdraft balance or tranche of the balance if it is exceeded, or depending on whether or not certain conditions are met.

5C.2.2

G

- (1) The purpose of ■ CONC 5C.2.1R is to permit a *firm* to impose an arranged overdraft charge or an unarranged overdraft charge on a *customer* only if the charge takes the form of an annual rate of interest. Consistent with this, a *firm* is forbidden from imposing on a *customer* a fee for making available an arranged overdraft facility (unless the amount of credit made available under the facility exceeds £10,000).
- (2) ■ CONC 5C.2.1R does not affect an arranged overdraft charge or an unarranged overdraft charge, liability for which accrued before the date on which ■ CONC 5C.2.1R came into force. ■ CONC 5C.2.1R does affect, however, an arranged overdraft charge or an unarranged overdraft charge liability for which accrued on or after the date on which ■ CONC 5C.2.1R came into force, irrespective of whether the arranged overdraft facility was granted or the agreement for the personal current account was made before or after the date on which ■ CONC 5C.2.1R came into force.
- (3) There has to be a single, uniform contractual rate of interest in respect of an individual *customer* that applies to any amount of arranged overdraft balance (other than any part of the balance that is free). This means that a *firm* may not have a graduated overdraft charging structure, where different rates of interest apply to specified tiers or bands of arranged overdraft balance, even if a higher band or tier is described as being intended for occasional emergency borrowing, or where lower or higher rates are contingent on certain behaviour, such as making or maintaining certain amounts or frequencies of deposits. A *firm* should not, for instance, calculate an arranged overdraft charge using a rate of interest of 3 per cent per annum if the *customer* borrows £100 by way of arranged overdraft, but use a rate of interest of 5 per cent per annum if the *customer* borrows £300. A *firm* may, however, vary a rate of interest using a contractual power of variation if it is fair, valid and enforceable.
- (4) Similarly, there has to be a single, uniform contractual rate of interest in respect of an individual *customer* that applies to any amount of unarranged overdraft balance (other than any part of the balance that is free), although this rate of interest may be lower than that which applies to an arranged overdraft balance.
- (5) A *firm* is not prevented from providing in the terms and conditions of the overdraft that no interest is payable in respect of arranged overdraft balances or unarranged overdraft balances of up to specified amounts (sometimes described as “fee-free amounts” or “buffer zones”) where permitted by ■ CONC 5C.2.1R. The purpose of ■ CONC 5C.2.1R(7) is to prevent *firms* from offering fee-free amounts or buffer zones that are free only in certain circumstances. An example of a buffer zone that is not permitted is where no interest is payable if an unarranged overdraft balance does not exceed the upper threshold of the buffer zone, but where interest becomes payable in respect of the entire balance (including the part of the balance in the buffer zone) if the *customer* exceeds the threshold.
- (6) A *firm* is not prevented from waiving or reducing overdraft charges (in whole or in part) in appropriate circumstances (for example, where the *firm* is treating a *customer* with forbearance in line with other rules in this sourcebook).

- (7) ■ CONC 5C.2.1R does not prohibit the level of the single, uniform contractual rate of interest from differing from *customer to customer*, or between personal current accounts for the same *customer*.
- (8) (a) The definitions of an arranged overdraft charge and an unarranged overdraft charge are broad.
- (b) These definitions capture any charges that arise because a *customer* has used an overdraft, or that are triggered by - or the size of which are affected by - the fact that the personal current account has entered, remains in, or extended, a debit position.
- (c) If the agreement provides that a charge is payable by a *customer* in exchange for the creation or continuation of an arranged overdraft facility, whether or not the *customer* in fact uses the facility, this charge is also caught by the definition of an arranged overdraft charge unless the facility has a pre-agreed limit in excess of £10,000. A charge of this sort is often referred to as a “facility fee” and payable periodically, for example annually.
- (d) The definitions of an arranged overdraft charge and an unarranged overdraft charge are not limited to charges that are described as financial consideration for the provision of *credit*. They could include, for example, a charge that is expressed as being referable to the execution of the payment transaction, if the charge is payable only where the transaction results in the account being in an overdrawn position or remaining in such a position. A charge for a payment transaction that is payable irrespective of whether or not the current account has a credit balance or a debit balance is not, however, caught by these definitions.
- (e) The definitions also do not include charges for operating or maintaining a personal current account (as distinct from charges for granting or continuing to make available an arranged overdraft facility in connection with the account), provided that the incidence and amount of the charges are not affected by whether or how much the *customer* uses an overdraft. A monthly account charge could be an example of such a charge.
- (9) ■ CONC 5C.2 requires *firms* to use only a rate of interest expressed as a percentage applied on an annual basis to the relevant balance of arranged overdraft or unarranged overdraft. If interest is compounded, *firms* are free to choose the intervals at which they add arranged overdraft charges and unarranged overdraft charges to the principal balance, provided that the same compounding frequency is used in relation to the *customer’s* arranged overdraft and unarranged overdraft in respect of the same personal current account.
- (10) *Firms* are reminded of the obligation in ■ CONC 3.5.3R(1) to include a representative example (including the *representative APR*) in a *financial promotion* that indicates a rate of interest or an amount relating to the *cost of credit*. *Firms* are also reminded of the obligation in ■ CONC 3.5.7R(1) to include in a *financial promotion* a *representative APR* if the *financial promotion* states or includes certain matters. *Firms* are referred to the *guidance* in ■ CONC 3.5.6G(2) in relation to how the rate of interest in ■ CONC 3.5.5R(1) should be calculated for the purposes of the representative example in ■ CONC 3.5.3R(1).

- (11) In ■ CONC 5C.2.1R(1)(b), “impose” an arranged overdraft charge or an unarranged overdraft charge includes creating the contractual right to receive it, and relying on, or enforcing, the contractual right or purporting to do so.

5C.3 Interest rates for unarranged overdrafts to be no more than the interest rates for arranged overdrafts

5C.3.1

R

- (1) A *firm* must not:
 - (a) enter into an agreement with a *customer* that provides for payment by the *customer* of an unarranged overdraft charge; or
 - (b) impose on a *customer*, who enters into an unarranged overdraft, an unarranged overdraft charge, unless the charge satisfies the conditions in (2) or (3) (as applicable).
- (2)
 - (a) This sub-paragraph applies where:
 - (i) the *customer* concerned has an arranged overdraft in connection with the personal current account; and
 - (ii) interest can become payable on some or all of the balance of that arranged overdraft.
 - (b) The rate of interest that applies to the unarranged overdraft must not exceed the rate of interest referred to in (a)(ii) that applies to the arranged overdraft.
- (a) This sub-paragraph applies where (2)(a) does not apply.
- (b) The *firm* must take reasonable steps to identify the type of personal current account provided by it (referred to in this sub-paragraph as the “comparable account”):
 - (i) that bears closest resemblance to the personal current account held by the *customer*;
 - (ii) in connection with which an arranged overdraft can arise:
 - (ii) of an amount equivalent to the amount of the unarranged overdraft; and
 - (ii) that can attract the payment of interest; and
 - (iii) that has been made available to a significant number of its *customers*.
- (c) The rate of interest that applies to the unarranged overdraft must not exceed the relevant rate of interest identified in (d).
- (d) The relevant rate of interest for the purposes of (c) is:

- (i) where there is only one rate of interest that applies to arranged overdrafts connected to the comparable account, that rate; or
- (ii) where there are two or more rates of interest that apply to arranged overdrafts connected to the comparable account, the highest of those rates that is imposed on a not insignificant number of the *customers* to whom the account has been made available.

5C.3.2

R

If a *firm* imposes an unarranged overdraft charge in contravention of ■ CONC 5C.3.1R(1)(b), the obligation to pay the charge is unenforceable against the *customer* and the *customer* is entitled to recover any sum paid by, or on behalf of, the *customer* under the obligation imposed.

5C.3.3

G

- (1) The purpose of ■ CONC 5C.3.1R is to forbid *firms* from charging a *customer* who borrows a particular amount using an unarranged overdraft facility more than they would have had to pay (disregarding any fee-free amount) if they had borrowed an equivalent amount using their arranged overdraft facility (or, if they do not have an arranged overdraft facility, the highest amount that would have been payable (disregarding any fee-free amount) by a not insignificant number of other *customers* if they had borrowed an equivalent amount under an arranged overdraft facility connected with a comparable personal current account).
- (2) In ■ CONC 5C.3.1R(1)(b), ■ CONC 5C.3.1R(3)(d)(ii) and ■ CONC 5C.3.2R, “impose” an unarranged overdraft charge includes creating the contractual right to receive it, and relying on, or enforcing, the contractual right or purporting to do so (“imposes” and “imposed” should be read accordingly).
- (3) ■ CONC 5C.3.1R does not affect an unarranged overdraft charge, liability for which accrued before the date on which ■ CONC 5C.3.1R came into force. ■ CONC 5C.3.1R does affect, however, an unarranged overdraft charge liability for which accrued on or after the date on which ■ CONC 5C.3.1R came into force, irrespective of whether the agreement was made before or after the date on which ■ CONC 5C.3.1R came into force.
- (4) A *firm* is not prevented by ■ CONC 5C.3.1R from charging a *customer* who borrows using an unarranged overdraft less than it charges the *customer* for using an arranged overdraft facility or from not charging for such borrowing.
- (5) The *rules* in ■ CONC 5C.3.1R (other than ■ CONC 5C.3.1R(1)(a)) and ■ CONC 5C.3.2R are made pursuant to section 137C of the *Act*.

5C.4 Impact of changes to charging structures

5C.4.1 **R** Where a *firm* makes a change to its charging structure or lending policies in response to the *rules* and *guidance* set out in ■ CONC 5C, the *firm* must ensure it considers the impact of that change on existing *customers*, including those with large arranged overdraft balances, and, where appropriate, treats such *customers* with forbearance and due consideration.

5C.4.2 **G**

- (1) A *firm* that makes changes as described in ■ CONC 5C.4.1R should, in accordance with *Principle 6*, have due regard to the interests of existing *customers* and treat them fairly. An example of such a change is a change in a *customer's* overdraft limit.
- (2) *Firms* are reminded that the purpose of the *rules* in ■ CONC 5D is to require *firms* to identify and provide appropriate assistance to *customers* (including existing *customers* at the time ■ CONC 5C becomes applicable) with a pattern of repeat overdraft use.

5C.5 Interpretation

5C.5.1

R

In this chapter:

- (1) An “arranged overdraft” is the running-account facility provided for in an *authorised non-business overdraft agreement* that is a *regulated credit agreement*.
- (2) An “arranged overdraft charge” is a charge that a *firm* is contractually entitled to levy:
 - (a) (by way of interest or otherwise) and that would not be due but for the fact that the *customer* has borrowed, or borrowed further or continues to borrow, using an arranged overdraft; or
 - (b) exclusively for making available to the *customer* an arranged overdraft with a pre-arranged limit of £10,000 or less, whether or not the *customer* borrows, borrows further or continues to borrow, using the arranged overdraft.
- (3) An “excluded account” is a personal current account that is offered on terms that:
 - (a) an agreement which provides authorisation in advance for the *customer* to overdraw on the account cannot arise; and
 - (b) either:
 - (i) the account cannot become overdrawn without prior arrangement; or
 - (ii) no charge is payable (by way of interest or otherwise) if the account becomes overdrawn without prior arrangement; and no charge is payable where the *firm* refuses a payment due to lack of funds.
- (4) A “personal current account” means an account, other than a current account mortgage, which is a payment account within the meaning of the *Payment Accounts Regulations* (see ■ CONC 5C.5.2G(1)).
- (5) A “private bank” is a *bank* or *building society*, or an operationally distinct brand of such a *firm*, over half of whose personal current account customers each had throughout the previous financial year net assets with a total value of not less than £250,000. For this purpose:
 - (a) net assets do not include:
 - (i) the value of the *customer’s* primary residence or any loan secured on that residence;

5C.5.2

G

- (ii) any rights of the *customer* under a qualifying contract of insurance within the meaning of the *Regulated Activities Order*; and
 - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the *customer* or on retirement, and to which the *customer* (or the *customer's* dependents) are, or may be, entitled; and
- (b) “previous financial year” means the most recent period of one year ending with 31 March.
- (6) An “unarranged overdraft” is a *regulated credit agreement* that arises as a result of:
- (a) a personal current account becoming overdrawn in the absence of an arranged overdraft; or
 - (b) the *firm* making available to the *customer* funds which exceed the limit of an arranged overdraft.
- (7) An “unarranged overdraft charge” is a charge (by way of interest or otherwise) that a *firm* is contractually entitled to levy and that would not be due but for the fact that the *customer* has borrowed, borrowed further or continues to borrow, using an unarranged overdraft.

- (1) The definition of “personal current account” refers to the definition of a “payment account” under the *Payment Accounts Regulations*, that is: “an account held in the name of one or more consumers through which consumers are able to place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers, but does not include any of the following types of account provided that the account is not used for day-to-day payment transactions: savings accounts; credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt; current account mortgages or e-money accounts”. The *FCA* has issued guidance on this definition: see ‘FG16/6 – Payment Accounts Regulations 2015’.

[**Note:** <https://www.fca.org.uk/publications/finalised-guidance/fg16-6-payment-accounts-regulations-2015-definition-payment-account>]

- (2) The definition of excluded account captures personal current accounts where there cannot be a pre-arranged overdraft facility, there cannot be an unarranged overdraft to which interest or charges apply and charges for refusing a payment due to lack of funds cannot arise.

Overdraft repeat use

Chapter 5D

Overdraft repeat use

5D.1 Purpose and application

Purpose

- 5D.1.1 **R** (1) In this chapter, “repeat use” refers to a pattern of overdraft use where the frequency and depth of use may result in high cumulative charges that are harmful to the *customer* or indicate that the *customer* is experiencing or at risk of financial difficulties.
- (2) The expressions “arranged overdraft”, “excluded account”, “personal current account”, “private bank” and “unarranged overdraft” have the same meaning as set out at ■ CONC 5C.
- (3) Relevant information held by the *firm* includes:
- information from the *customer’s* personal current account; and
 - information provided by the *customer*.
- (4) In (3)(a):
- the personal current account is the personal current account in respect of which the overdraft is provided;
 - information from the *customer’s* personal current account may include, but is not limited to:
 - a significant reduction in income into the account;
 - new periodic payments being set up to repay new borrowing commitments, where the level of payments may suggest that the *customer* is at risk of financial hardship.
- 5D.1.1A **G** A *customer* is likely to experience financial hardship if they are unable to pay *priority debts* or essential living expenses.
- 5D.1.2 **G** The purpose of this chapter is to require *firms* to:
- monitor *customers’* patterns of overdraft use;
 - identify *customers* with patterns of repeat use; and
 - take appropriate steps with the aim of changing such patterns of use.
- 5D.1.3 **R** **Who and what?**
- (1) Subject to (2), this chapter applies to a *firm* with respect to *consumer credit lending* and connected activities in relation to arranged

overdrafts and unarranged overdrafts associated with personal current accounts.

- (2) This chapter does not apply to:
 - (a) a *firm* if all personal current accounts provided or offered by the *firm* are excluded accounts;
 - (b) a *firm* in respect of any personal current account which may be used for a currency other than a currency of the *United Kingdom*;
 - (c) a private bank; or
 - (d) a *credit union*.
- (3) To the extent that a *rule* in this chapter does not already apply to *TP firms* as a result of ■ GEN 2.2.26R, it applies to them so far as the *rule* would have applied were it in effect before *IP completion day*.
- (4) To the extent that a *rule* in this chapter does not already apply to *Gibraltar-based firms* as a result of ■ GEN 2.3.1R, it applies to them so far as the *rule* would have applied were it in effect before *IP completion day*.

Where?

5D.1.4

R

This chapter applies to a *firm* with respect to activities carried on from an establishment maintained by it in the *United Kingdom*.

5D.2 Obligation to identify and monitor repeat use of overdrafts

- 5D.2.1** **R** A *firm* must establish, implement and maintain clear and effective policies, procedures and systems to:
- (1) monitor and review periodically the pattern of drawings and repayments of each of its *customers* under an arranged overdraft or an unarranged overdraft, and other relevant information held by the *firm*; and
 - (2) identify as early as possible, by reference to an appropriate collection of factors that take account of any relevant information held by the *firm*, any *customers* in respect of whom there is a pattern of repeat use, and then sub-divide those *customers* into the following two categories:
 - (a) *customers* in respect of whom there are signs of actual or potential financial difficulties;
 - (b) all other *customers* who show a pattern of repeat use (that is, all *customers* within **■ CONC 5D.2.1R(2)** who are not in category (a)).
- 5D.2.2** **R** The rules in **■ CONC 5D.2.1R(1)** and (2) do not apply where the *firm* is already in the process of intervening in respect of the *customer's* overdraft use in accordance with **■ CONC 5D.3**.
- 5D.2.3** **G**
- (1) The policies, procedures and systems referred to in **■ CONC 5D.2.1R** should, having regard to the nature, scale and complexity of the *firms' consumer credit lending* activity in relation to overdrafts, enable the *firm*, at regular intervals, to pro-actively look back over an appropriate period at patterns of overdraft use.
 - (2) A *firm* may decide the frequency with which it reviews previous overdraft use, and the length of the preceding period of overdraft use that it considers when doing so, provided that the *firm* can demonstrate that its policies, procedures and systems are effective in promptly identifying *customers* who are within **■ CONC 5D.2.1R(2)(a)** or (b).
 - (3) **■ CONC 5D.2.1R** does not specify the frequency, duration or amount of drawings that may constitute repeat use. *Firms* have discretion, therefore, to tailor the policies, procedures and systems required by **■ CONC 5D.2.1R** to their specific business circumstances. If a *customer* has become or remained overdrawn in every *month* over the preceding 12-*month* period, it is likely that the *customer* will be

within ■ CONC 5D.2.1R(2)(a) or (b). It is also likely, however, that there will be other patterns of drawings in fewer numbers of *months* that are caught by ■ CONC 5D.2.1R(2)(a) or (b). There need not necessarily be drawings under an overdraft in consecutive *months* in order for use to be properly treated as repeat use. Conversely, there may be small and temporary drawings, even in consecutive *months*, that are neither indicative of actual or potential financial difficulties nor the cause of high cumulative charges.

- (4) When determining whether there is a high cumulative charge for overdraft use which may be harmful, the *firm* should consider the total amount of the combined charges both in absolute terms and relative to the *customer's* financial circumstances, where known.
- (5) Where there is a pattern of repeat use of an overdraft associated with a personal current account, features of that use and other factors which may be a sign of actual or potential financial difficulties include:
 - (a) one or more of the matters set out in ■ CONC 1.3.1G(1) to (7) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
 - (b) an upward trend in a *customer's* use of the overdraft over time, having regard to one or both of the following:
 - (i) the number of *days* of use per *month*; and
 - (ii) the value of the *customer's* borrowing.
 - (c) changes to the regular credits or debits to the personal current account, which may indicate a fall in disposable income or increased expenditure;
 - (d) use of other products which may indicate a fall in disposable income or growing indebtedness (for example, a reduction in the balance of a savings account, or an increase in the outstanding balance on another *credit* product) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
 - (e) the use of an unarranged overdraft associated with the personal current account, especially if becoming larger, more sustained or more frequent over time;
 - (f) the incidence of refused payments in relation to the personal current account, especially if there is a rise in the number or frequency of refused payments over time;
 - (g) information provided by the *customer* that indicates the *customer* is in, or is likely to experience, financial difficulties.
- (6) A *customer* may in fact be in actual or potential financial difficulties even if none of the factors described above is present, so the *customer's* response to the *firm's* initial intervention will be important for determining the appropriate next steps.
- (7) When a *firm* is first implementing policies, procedures and systems to identify *customers* in respect of whom there is a pattern of repeat use, the *firm* should give priority to identifying those *customers* who are vulnerable and experiencing, or at risk of, financial difficulties, in circumstances where prioritisation is appropriate in the light of the

scale and complexity of the *firm's consumer credit lending activity* in relation to overdrafts.

5D

5D.3 Interventions to be taken in the case of repeat users

5D.3.1

R

- (1) This *rule* applies where a *firm*:
 - (a) identifies that a *customer* has a pattern of repeat use within the meaning of ■ CONC 5D.2.1R(2)(b);
 - (b) assesses that the *customer* is likely to continue that pattern of use; and
 - (c) does not consider, acting reasonably, that the *customer* is one in respect of whom there are signs of actual or potential financial difficulties.
- (2) The *firm* must communicate with the *customer* (“the first communication”) in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) highlighting the *customer’s* pattern of overdraft use and indicating that the *customer* should consider whether it is resulting or may result in high avoidable costs.
- (3) The *firm* must continue to monitor and review the *customer’s* pattern of overdraft use after the first communication, and if after a reasonable period the pattern of use continues to be within ■ CONC 5D.2.1R(2)(b), the *firm* must further communicate with the *customer* (“the second communication”), reminding the *customer* of the content of the first communication or reiterating that content.
- (4) The *firm* must continue to monitor and review the *customer’s* pattern of overdraft use after the second communication, and if the pattern of use continues to be within ■ CONC 5D.2.1R(2)(b), the *firm* must continue to communicate with the *customer* in similar terms or for a similar purpose at least annually until such time as the pattern of use ceases to be within ■ CONC 5D.2.1R(2)(b).

5D.3.2

R

- (1) This *rule* applies where a *firm* identifies that a *customer*:
 - (a) has a pattern of repeat use within the meaning of ■ CONC 5D.2.1R(2)(a); and
 - (b) is one in respect of whom there are signs of actual or potential financial difficulties.
- (2) The *firm* must promptly communicate with the *customer* in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the

firm and the *customer*) highlighting the *customer's* pattern of overdraft use and indicating that the *customer* should consider whether it is resulting or may result in high avoidable costs. The *firm* must encourage the *customer* to contact the *firm* to discuss their situation and explain that doing nothing could make things worse.

- (3) If after a reasonable period the *customer* has not contacted the *firm* and the *customer's* pattern of use continues to be within ■ CONC 5D.3.2R(1), the *firm* must take reasonable steps to contact the *customer* to discuss their situation.
- (4) In discussions under (2) or (3) (which need not be on a single occasion), the *firm* must seek to explore the reasons for the *customer's* pattern of overdraft use, as well as the reasons for the *customer's* actual or potential financial difficulties, and what (if anything) the *customer* is doing, or intends to do, to address those issues.
- (5) The *firm* must:
 - (a) promptly identify and set out suitable options, in light of all relevant information held by the *firm* (including the information gathered under (4)), designed to:
 - (i) help the *customer* to reduce their overdraft use over a reasonable period of time; and
 - (ii) provide the support required to address their actual or potential financial difficulties,
 in such a way that does not adversely affect the *customer's* financial situation; and
 - (b) explain to the *customer* that, if the *customer* fails to engage in the discussion or fails to take appropriate action to address the situation, one of the possible consequences is that the *firm* may need to consider the suspension or removal of the overdraft facility or a reduction in the credit limit.
- (6) If the *customer* declines to contact the *firm* in response to the communication in (2) and to respond to attempts by the *firm* to contact them under (3), or to take reasonable steps to take forward an appropriate option under (5) or to otherwise address the situation, the *firm* must after a reasonable period consider whether to continue to offer the overdraft facility and whether to reduce the credit limit.
- (7) Sub-paragraphs (5)(b) and (6) do not apply if the suspension or removal of the overdraft facility or a reduction in the credit limit would cause financial hardship to the *customer*.

5D.3.3

G

- (1) The purpose of ■ CONC 5D.3 is to require a *firm* to intervene in an appropriate and proportionate manner where it detects repeat use of an overdraft with the aim of reducing that use and improving the *customer's* financial situation. A *firm* should keep in mind, when doing so, the principle that an overdraft is not generally suitable for long-term use that results in a high total cost burden, as well as the need to pay due regard to the interests of its *customers* and treat them fairly in accordance with *Principle 6*.

When a *firm* identifies that ■ CONC 5D.3.2R(1)(a) and ■ (b) apply to a *customer*, it should:

- (a) promptly take the action specified in ■ CONC 7.3.7AG(1)(a) to ■ (b) (provision of information to the *customer*); and
 - (b) where appropriate to the *customer's* circumstances, follow the guidance set out in ■ CONC 7.3.7AG(2) to ■ (6) (further communication with the *customer*).
- (2) ■ CONC 5D.3 does not specify a particular form of words to be used in communications with repeat overdraft users, and *firms* have discretion to tailor the language and tone of those communications to the circumstances of the individual *customer*.
- (3) For the purposes of ■ CONC 5D.3.2R(3), "reasonable period" is unlikely to be longer than one *month*.
- (4) Options that a *firm* could identify for the purposes of ■ CONC 5D.3.2R(5)(a) may include, where assessed as appropriate for the *customer*:
- (a) advice on budgeting and money management, for example adjusting payment dates or setting up alerts;
 - (b) [deleted]
 - (c) [deleted]
 - (d) forbearance and other support, including doing one or more of the following:
 - (i) reducing or waiving interest and other charges or (where applicable) allowing additional time to pay, where this does not unduly delay further help to the *customer*, or permit further deterioration of the *customer's* financial position;
 - (ii) transferring the overdraft debt to an alternative *credit agreement* on more favourable terms (refinancing), provided that this would not cause financial hardship to the *customer*; or
 - (iii) agreeing staged reductions in the overdraft limit and balance (agreeing a repayment plan).
 - (e) a reduction in the credit limit or the suspension or removal of the overdraft facility (or reminding the *customer* that they can ask the *firm* to take these steps) provided that such reduction, suspension or removal would not cause financial hardship to the *customer*.
- (5) (a) If an overdraft *customer* has already been identified by a *firm* as being in financial difficulties, and is already being treated with appropriate forbearance by the *firm*, the *rules* in this section do not require the *firm* to do anything which is inconsistent with the treatment that it has already adopted in respect of that *customer*.
- (b) Where a *Debt Respite moratorium* is in effect for a *customer's* overdraft and a *firm* is complying with its obligations pursuant to that moratorium, the *firm* is treating the *customer* with appropriate forbearance with respect to the portion of the overdraft that is subject to the moratorium. The *firm* is not required to take the steps in relation to that *moratorium debt*

under this section during the moratorium, as these steps would be inconsistent with the treatment currently being adopted in respect of that *customer*.

(6) *Firms* are reminded that they should not consider the suspension or removal of the overdraft facility, or a reduction in the credit limit, under ■ CONC 5D.3.2R(6) if this would cause financial hardship to a *customer* (■ CONC 5D.3.2R(7)). A *firm* should give careful thought to the potential effect of suspension, removal or reduction on the *customer* and consider these steps as part of a response to repeat use only where the *firm* is confident, on the basis of sufficient information and enquiry, that they would not cause financial hardship in the individual circumstances of the case.

- 5D.3.4 **R** Where a *firm* identifies a forbearance or other support option under ■ CONC 5D.3.3G(4)(d), the *firm* must take all reasonable steps to ensure that any measure agreed with the *customer* is sustainable.
- 5D.3.5 **G**
- (1) A measure is unlikely to be sustainable if it has the result that the *customer* cannot meet their *priority debts* and essential living expenses.
 - (2) *Priority debts* and essential living expenses include, but are not limited to, payments for mortgage, rent, council tax, food and utility bills.
- 5D.3.6 **R** A *firm* must take reasonable steps to ensure that any measure remains appropriate.
- 5D.3.7 **G** What is reasonable in any given case will depend on the *customer's* circumstances and the nature of the measure provided, but may include reviewing the terms of the measure at appropriate intervals and responding as necessary. It will also involve reacting appropriately to any relevant information the *firm* is otherwise made aware of, such as correspondence from a debt adviser.
- 5D.3.8 **R** Where a *firm* assesses income and expenditure, it must do so in an objective manner.
- 5D.3.9 **G** When complying with ■ CONC 5D.3.8R:
- (1) the assessment should be informed by sufficiently detailed information; and
 - (2) a *firm* may have regard to the spending guidelines in the Standard Financial Statement or an equivalent tool.
- 5D.3.10 **G** A *firm* should have clear written policies setting out how and in what circumstances it conducts income and expenditure assessments.

Information provided to customers

5D.3.11

G

When a *firm* identifies that ■ CONC 5D.3.2R(1)(a) and ■ (b) apply to a customer:

- (1) when engaging with *customers*, *firms* are reminded of their obligations to communicate with *customers* in accordance with *Principle 12* and ■ PRIN 2A, or *Principle 7*, as applicable;
- (2) a *firm* should make available to *customers* timely, clear and understandable information which:
 - (a) takes into account the individual circumstances of the *customer*;
 - (b) is sufficient to enable the *customer* to understand their financial position in relation to their debt, including how it is reported to the *customer's* credit file; and

is sufficient to enable the *customer* to understand their options in relation to their debt, including the potential impact of any forbearance or other support on their overall balance and how it will be reported to the *customer's* credit file.
- (3) A *firm* should consider the most appropriate way to engage and communicate with a *customer*, and support *customers* to engage through appropriate channels, changing the channel if necessary to enable the *customer* to engage with the *firm* effectively.



5D.4 Monitoring repeat use strategies

5D.4.1 **R** A *firm* must monitor and periodically review the effectiveness of its policies, procedures and systems under **■ CONC 5D.2.1R**, and update or adjust them as appropriate.

5D.4.2 **G** In assessing and periodically reviewing the effectiveness of its policies, procedures and systems under **■ CONC 5D.2.1R**, a *firm* should have regard, amongst other matters, to the number of repeat users and size of their overdraft balances before putting in place the procedures required by these *rules*, compared with the number and size following implementation of those procedures. More generally, a *firm* should assess the extent to which it has been able to assist those *customers* who were showing a pattern of repeat use and who could benefit from assistance.

5D.5 Reporting on repeat use of overdrafts

5D.5.1

R

- (1) A *firm* must submit a document to the *FCA* by electronic mail to overdrafts@fca.org.uk, containing a detailed description of the policies, procedures and systems it establishes to comply with:
 - (a) ■ CONC 5D.2.1R;
 - (b) ■ CONC 5D.3.2R; and
 - (c) ■ CONC 5D.4.1Rno later than the date on which the *firm* becomes subject to ■ CONC 5D.
- (2) A *firm* must prepare two reports for the *FCA* describing the results of the monitoring required by ■ CONC 5D.4.1R. The first report must be in respect of the *six-month* reporting period beginning on the date on which the *firm* becomes subject to ■ CONC 5D. The second report must be in respect of the *six-month* reporting period that begins immediately after the end of the reporting period covered by the first report. Each report must be submitted to the *FCA* by electronic mail to overdrafts@fca.org.uk within one *month* following the end of the relevant *six-month* reporting period and must include the following information:
 - (a) the number of repeat users and total size of their overdraft balances at the start of the reporting period;
 - (b) the number of repeat users and total size of their overdraft balances at the end of the reporting period; and
 - (c) any explanation, commentary or background on the figures in (a) and (b).
- (3) Where a *firm* proposes to update its policies, procedures and systems, it must submit a report to the *FCA* containing a description of any substantial changes.

Chapter 6

Post contractual requirements

6.1 Application

- 6.1.1** **R** This chapter applies, unless otherwise stated in a *rule*, or in relation to a *rule*, to a *firm* with respect to *consumer credit lending*.
- 6.1.2** **G**
- (1) ■ CONC 6.5 and ■ CONC 6.7 apply to firms with respect to *consumer credit lending*.
 - (2) ■ CONC 6.3 applies to current account agreements that would be *regulated credit agreements* if the *customer* overdraws on the account.
 - (3) ■ CONC 6.4 and ■ CONC 6.6 apply to *firms* which carry on *consumer credit lending* in relation to *regulated credit agreements* and *firms* which carry on *consumer hiring* in relation to *regulated consumer hire agreements*.
 - (4) ■ CONC 6.7.17 R to ■ CONC 6.7.26 R also apply to *firms* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* in relation to a *P2P agreement*.
 - (5) ■ CONC 6.8 applies to *credit broking*.



**6.2 Assessment of creditworthiness:
during agreement [deleted]**

[deleted]

6.3 Information to be provided on a current account agreement and on significant overdrawn

Application

6.3.1

R

This section applies:

- (1) to a *firm* with respect to *consumer credit lending*; and
- (2) where a *firm* has entered into a current account agreement where:
 - (a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and
 - (b) if the account-holder did so, this would be a *regulated credit agreement*.

6.3.2

R

■ CONC 6.3.3 R does not apply where the overdraft or excess would be secured on *land*.

Current account information

6.3.3

R

A *firm* must provide to the account-holder, in writing, the information in ■ CONC 4.7.2R (2) at least annually.

[**Note:** section 74A of CCA (partial implementation of article 18 of the *Consumer Credit Directive*)]

Information to be provided on significant overdrawn without prior arrangement

6.3.4

R

- (1) A *firm* must inform the account-holder in writing of the matters in (2) without delay where:
 - (a) the account-holder overdraws on the current account without a pre-arranged overdraft, or exceeds a pre-arranged overdraft limit, for a period exceeding one *month*;
 - (b) the amount of that overdraft or excess is significant throughout that period;
 - (c) the overdraft or excess is a *regulated credit agreement*; and
 - (d) the account-holder has not been informed in writing of the matters in (2) within that period.

- (2) The matters in (1) are:
 - (a) the fact that the account is overdrawn or the overdraft limit has been exceeded;
 - (b) the amount of that overdraft or excess;
 - (c) the rate of interest charged on it; and
 - (d) any other charges payable by the *customer* in relation to it (including any penalties and any interest on those charges).
- (3) For the purposes of (1)(b) the amount of the overdraft or excess is significant if:
 - (a) the account-holder is liable to pay a charge for which he would not otherwise be liable; or
 - (b) the overdraft or excess is likely to have an adverse effect on the *customer's* ability to receive further *credit* (including any effect on the information about the *customer* held by a *credit reference agency*); or
 - (c) it otherwise appears significant, having regard to all the circumstances.
- (4) Where the overdraft or excess is secured on *land*, (1)(a) is to be read as if the reference to one *month* were a reference to three *months*.

[Note: section 74B of CCA]

[Note: article 18 of the *Consumer Credit Directive*]

6.4 Appropriation of payments

Application

6.4.1

R

This section applies to

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *consumer hiring*.

Appropriation

6.4.2

R

- (1) Where a *firm* is entitled to payments from the same *customer* in respect of two or more *regulated agreements*, the *firm* must allow the *customer*, on making any payment in respect of those agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum paid by him:
 - (a) in or towards the satisfaction of the sum due under any one of the agreements; or
 - (b) in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as the *customer* thinks fit.

[Note: section 81(1) of CCA]

- (2) If the *customer* fails to make any such appropriation where one or more of the agreements is:
 - (a) a *hire-purchase agreement* or *conditional sale agreement*; or
 - (b) a *consumer hire agreement*; or
 - (c) an agreement in relation to which any *security* is provided;
 the *firm* must appropriate the payment towards satisfaction of the sums due under the agreements in the proportions which those sums bear to one another.

[Note: section 81(2) of CCA]



6.5 Assignment of rights

Application

6.5.1 **R** This section applies to a *firm* with respect to *consumer credit lending*.

Notice of assignment

6.5.2 **R** (1) Where rights of a *lender* under a *regulated credit agreement* are assigned to a *firm*, that *firm* must arrange for notice of the assignment to be given to the *customer*:

- (a) as soon as reasonably possible; or
- (b) if, after the assignment, the arrangements for servicing the *credit* under the agreement do not change as far as the *customer* is concerned, on or before the first occasion they do.

[Note: section 82A of CCA]

(2) Paragraph (1) does not apply to an agreement secured on *land*.

(3) A *firm* may assign the rights of a *lender* under a *regulated credit agreement* to a third party only if:

- (a) the third party is a *firm*; or
- (b) where the third party does not require *authorisation*, the *firm* has an agreement with the third party which requires the third party to arrange for a notice of assignment in accordance with (1).

[Note: article 17 of the *Consumer Credit Directive*]

6.6 Pawn broking: conduct of business

Application

6.6.1

R

This section applies to:

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *consumer hiring*.

Failure to supply copies of pledge agreement etc

6.6.2

G

Sections 62 to 64 and 114(1) of the CCA continue to apply to a *regulated agreement* under which a *person* takes any article in *pawn*. A *firm* which fails to observe its obligations under those provisions may be subject to disciplinary action by the FCA.

[Note: section 115 of CCA]

Pawn records: relating to articles under a regulated credit agreement

6.6.3

R

A *firm* which takes any article in *pawn* under a *regulated credit agreement* must keep such books or other records as are sufficient to show and explain readily at any time all dealings with the article, including:

- (1) the taking of the article in *pawn*;
- (2) any redemption of the article; and
- (3) where the article has become realisable by the *firm*, any sale of the article under section 121(1) of the CCA.

[Note: regulation 2(1) of SI 1983/1565]

6.6.4

R

Without prejudice to the generality of **CONC 6.6.3 R**, the entries in the books or other records in respect of the dealings mentioned in **CONC 6.6.3 R (1)** to **CONC 6.6.3 R (3)** must contain the information in **CONC 6.6.7 R** to **CONC 6.6.9 R**.

[Note: regulation 2(2) of SI 1983/1565]

6.6.5 **R** Where the entries in relation to any article taken in *pawn* in ■ CONC 6.6.4 R are not shown together as a whole but are shown in separate places, then in each place where entries are made the record must show:

- (1) the date and the number or other reference of the agreement under which the article was taken in *pawn* and, where separate from any document embodying the agreement, the number or other reference of the pawn-receipt;
- (2) the date on which the article was taken in *pawn*; and
- (3) the name of the *customer*.

[Note: regulation 2(3) of SI 1983/1565]

6.6.6 **R** A *firm* must retain the books or other records required by ■ CONC 6.6.3 R at least until the expiration of whichever is the longer of the following periods:

- (1) five years from the date on which the article was taken in *pawn*; or
- (2) where an article has become realisable by the *firm*, three years from the date of sale under section 121(1) of the CCA or the redemption of the article, as the case may be.

[Note: regulation 2(4) of SI 1983/1565]

Information to be kept by a person who takes any article in pawn

6.6.7 **R** The entries in the books or other records, in relation to the taking of the article in *pawn*, must contain the following information:

- (1) the date and the number or other reference of the agreement under which the article was taken in *pawn*, and of the pawn-receipt if separate, sufficient to identify it or them;
- (2) the date on which the article was taken in *pawn*;
- (3) the name and a postal address and, where appropriate, other address of the *customer*;
- (4) the description that appears in the pawn-receipt of the article taken in *pawn*;
- (5) the amount of the *credit* secured by the *pledge*;
- (6) the date of the end of the redemption period; and
- (7) the rate of interest, and the amount or rate of any other charges for *credit*, as provided for in the agreement under which the article was take in *pawn*.

[Note: paragraph 1 of Schedule to SI 1983/1565]

6.6.8 **R** The entries in the books or other records in relation to any redemption of the article must contain the date of the redemption.

[Note: paragraph 2 of Schedule to SI 1983/1565]

6.6.9 **R** The entries in the books or other records, where the article has become realisable by the *firm*, in relation to any sale of the article under section 121(1) of the CCA, must contain the following information:

- (1) the date of the sale;
- (2) where the article was sold by auction, the name and a postal address of the auctioneer;
- (3) where the article was not sold by auction, the postal address of the premises at which the sale took place;
- (4) the gross amount realised;
- (5) the itemised expenses, if any, of the sale;
- (6) where (5) applies, the net proceeds of sale, being the difference between the gross amount in (4) and the total amount of the expenses in (5);
- (7) the amount which would have been payable under the agreement under which the article was taken in *pawn* if the article had been redeemed on the date of the sale;
- (8) where the net proceeds of sale are not less than the sum which, if the article taken in *pawn* had been redeemed on the date of the sale, would have been payable for its redemption, the amount of any surplus payable to the *customer*;
- (9) where (8) does not apply, the amount by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the article taken in *pawn* on the date of the sale, being the amount for which the *customer* remains liable under section 121(4) of the CCA;
- (10) the date on which any surplus in (8) was paid to the *customer*;
- (11) the date on which any amount in (9) for which the *customer* remained liable under section 121(4) of the CCA was received from the *customer*.

[Note: paragraph 3 to Schedule to SI 1983/1565]



6.7 Post contract: business practices

Application

6.7.1

R

- (1) This section applies to a *firm* with respect to *consumer credit lending*.
- (2) ■ CONC 6.7.17 R to ■ CONC 6.7.26 R also apply to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement* and references in those provisions to a *firm* refinancing an agreement refer to any action taken by an *operator of an electronic system in relation to lending* which has the result that a *P2P agreement* is refinanced.
- (3) ■ CONC 6.7.3AR to ■ CONC 6.7.3DG and ■ CONC 6.7.27R to ■ CONC 6.7.40G do not apply in relation to a credit card of a type that the *firm* promotes to *customers* solely for the purposes in each case of the *customer's* business (a "business credit card").
- (4) ■ CONC 6.7.2R to ■ CONC 6.7.3G do not apply to *retail revolving credit*.
- (5) ■ CONC 6.7.3AR and ■ CONC 6.7.3BG do not apply to the extent that the *firm* follows the guidance entitled Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance, except where the guidance indicates that the *firm* should act in accordance with ■ CONC 6.7.3AR.

Business practices

6.7.2

R

- (1) A *firm* must monitor a *customer's* repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.
- (2) This *rule* does not apply in relation to a credit card unless the card is a business credit card (see ■ CONC 6.7.1R(3)).

[Note: paragraph 6.2 of ILG]

6.7.3

G

The action referred to in ■ CONC 6.7.2 R should generally include:

- (1) notifying the *customer* of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and

[Note: paragraph 6.16 of ILG]

- (2) providing contact details for *not-for-profit debt advice bodies*.

[Note: paragraph 6.2 (box) of *ILG*]; or

- (3) where a *Debt Respite moratorium* is in effect for the *customer's* debt for the purposes of ■ CONC 6.7.2R, complying with its obligations pursuant to the moratorium, with respect to that *moratorium debt*.

Business practices: credit cards and retail revolving credit

6.7.3A

R

A *firm* must monitor a *retail revolving credit customer's* or a credit card *customer's* repayment record and any other relevant information held by the *firm* and take appropriate action where there are signs of actual or possible financial difficulties.

6.7.3B

G

- (1) Circumstances in which there are signs of actual or possible financial difficulties include where there is a significant risk of one or more of the matters set out in ■ CONC 1.3.1G(1) to (7) (Guidance on financial difficulties) occurring in relation to the *retail revolving credit customer* or *credit card customer*.
- (2) Examples of appropriate action as referred to in ■ CONC 6.7.3AR would include the *firm* doing one or more of the following, as may be relevant in the circumstances:
 - (a) considering suspending, reducing, waiving or cancelling any further interest, fees or charges (for example, when a *customer* provides evidence of financial difficulties and is likely to be unable to meet payments as they fall due or is only able to make token payments, where in either case the level of debt would continue to rise if interest, fees and charges continue to be applied);
 - (b) accepting token payments for a reasonable period of time in order to allow a *customer* to recover from an unexpected income shock, from a *customer* who demonstrates that meeting the *customer's* existing debts would mean not being able to meet the *customer's* *priority debts* or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills);
 - (c) notifying the *customer* of the risk of escalating debt, additional interest, fees or charges and of potential financial difficulties; and
 - (d) providing contact details for *not-for-profit debt advice bodies* and encouraging the *customer* to contact one of them.
- (2A) Where a *Debt Respite moratorium* is in effect for the *customer's* *retail revolving credit* or credit card debt and a *firm* is complying with its obligations pursuant to the moratorium, this is likely to constitute appropriate action in relation to that *moratorium debt* for the purposes of ■ CONC 6.7.3AR.
- (3) A *customer* paying the minimum amount required under the agreement is not, by itself, a sign of possible or actual financial difficulties under ■ CONC 6.7.3AR. It may, however, be such a sign where, for example, a *customer* with a pattern of paying more than the minimum required payment reduces the payments to the minimum required payment due, but their pattern of drawing down *credit* on the card does not materially change.
- (4) In determining what is "appropriate action" under ■ CONC 6.7.3AR, a *firm* should take into account any steps it has taken under ■ CONC 6.7.30R, ■ CONC 6.7.31R or ■ CONC 6.7.37R.

6.7.3C **R** A firm must establish, implement and maintain an adequate policy for identifying and dealing with customers showing signs of actual or possible financial difficulties, even though they may have not missed a payment.

6.7.3D **G** The policy referred to in **CONC 6.7.3CR** is in addition to the policy required under **CONC 7.2.1R**.

Credit card and retail revolving credit requirements

6.7.4 **R** A firm must first allocate a repayment to the debt subject to the highest rate of interest (and then to the next highest rate of interest and so on) for:

- (1) the outstanding balance on a credit card; or
- (2) the outstanding balance on a store card; or
- (3) a credit card or a store card, in relation to which there is a *fixed-sum credit* element, to repayments beyond those required to satisfy the fixed instalments; or
- (4) a credit card or a store card, in relation to which the customer has opted to repay part of the outstanding balance in fixed instalments over a fixed duration, to repayments beyond those required to satisfy the fixed instalments.

[Note: paragraph 6.3 of ILG]

6.7.4A **G** The rule in **CONC 6.7.4R(4)** applies where a regulated credit agreement for a credit card or a store card provides the customer with the option of allocating one or more outstanding purchase or other types of transactions on their credit card or store card to one or more repayment plan repayable in fixed instalments over a fixed duration (in **CONC 6.7.4BR**, **CONC 6.7.4CG** and **CONC 6.7.4DG**, such option to repay in fixed instalments is referred to as a “fixed instalment plan”).

6.7.4B **R** The firm must not offer the customer a fixed instalment plan unless, acting reasonably, it has concluded that such option is likely to be in the customer’s best interests and the firm has taken reasonable steps to ensure that the customer is put in a position to make an informed decision regarding the exercise of such option.

6.7.4C **G** Examples where it would not be considered reasonable for a firm to conclude that a fixed instalment plan is likely to be in the customer’s best interests (in accordance with **CONC 6.7.4BR**) include:

- (a) where the rate of interest that applies to cash transactions (this includes, among other things, cash withdrawals, purchases of travellers’ cheques or foreign currency, gaming transactions and other cash-like transactions obtained using a credit card or store card) is higher than the rate of interest applicable to other types of transactions on the customer’s credit card or store card and the customer has a significant outstanding cash transactions balance (which is not included in the offer of a fixed instalment plan) or a

recent history of carrying a significant cash transactions balance; and/or

- (b) where a *customer* is likely to be worse off by taking out a fixed instalment plan than if the *customer* does not take out the fixed instalment plan.

6.7.4D

G

Examples of reasonable steps required by ■ CONC 6.7.4BR to ensure that the *customer* is put in a position to make an informed decision regarding the exercise of the option to take out a fixed instalment plan would include the *firm* doing the following:

- (a) providing a *customer* with information, clearly and in plain language, about the features, costs and implications of a fixed instalment plan to enable the *customer* to make an informed decision about whether a fixed instalment plan meets the *customer's* needs and financial situation. This may include illustrative examples of one or more typical fixed instalment plans designed to help the *customer* to understand the effect of setting up a fixed instalment plan and to compare costs. Illustrative examples could, where possible, be personalised to a *customer's* individual circumstances; and
- (b) explaining in clear terms to the *customer* the implications arising from a failure to make a fixed instalment plan payment. Where relevant, this should include explaining to the *customer* whether a failure to make a fixed instalment plan payment would be reported to a *credit reference agency* as a missed payment.

6.7.5

R

- (1) Subject to (4), a *firm* must set the minimum required *repayment* under a *regulated credit agreement* for a credit card or a store card at an amount equal to at least that amount which repays the interest, fees and charges that have been applied to the *customer's* account, plus one percentage of the amount outstanding.

[Note: paragraph 6.4 of ILG]

- (2) Where (1) applies and a *firm* applies interest to a period of more than one *month*, for the purpose of calculating the amount of the interest part of the minimum required *repayment* the *firm* may disregard any interest applied in respect of a period prior to the period of the statement in question.

[Note: paragraph 6.4 (box) of ILG]

- (3) Paragraph (1) applies to agreements made on or after 1 April 2011.
- (4) Paragraph (1) does not apply in circumstances where the *firm*, in order to allow the *customer* to defer (in whole or part) the making of *repayments* under the *regulated credit agreement* if they choose to do so in the circumstances and for the duration set out in the guidance entitled Credit cards (including retail revolving credit) and coronavirus: temporary guidance for firms, the guidance entitled Credit cards (including retail revolving credit) and coronavirus: updated temporary guidance for firms or the guidance entitled Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance, varies or has varied the *regulated credit*

agreement so as not to oblige the customer to make minimum required repayments for that duration.

6.7.6 **R** *A firm under a regulated credit agreement for a credit card or a store card must provide a customer with the option to pay any amount they choose (equal to or more than the minimum required repayment but less than the full outstanding balance) on a regular basis, when making automated repayments.*

[Note: paragraph 6.5 of ILG]

6.7.7 **R** *A firm must not increase, nor offer to increase, a customer's credit limit on a credit card or retail revolving credit agreement where:*

- (1) *the firm has been advised that the customer does not wish to have any credit limit increases; or*
- (2) *a customer is at risk of financial difficulties.*

[Note: paragraphs 6.6 and 6.7 of ILG]

6.7.8 **R** *A firm under a retail revolving credit agreement, or a regulated credit agreement for a credit card, must:*

- (1) *permit a customer at any time to reduce or decline offers to increase the credit limit; and*
- (2) *permit a customer to decline to receive offers of credit limit increases.*

[Note: paragraphs 6.8 and 6.9 of ILG]

6.7.9 **R** (1) *This rule applies to a regulated credit agreement for a credit card and to a retail revolving credit agreement.*

- (2) *A firm must notify the customer of a proposed increase in the credit limit under the agreement:*
 - (a) *in the case of a regulated credit agreement for a credit card or a store card, at least 30 days before the increase comes into effect; and*
 - (b) *in the case of a retail revolving credit agreement (other than an agreement for a store card), at least 28 days before the increase comes into effect,**except in the circumstances described in (3).*

- (3) *The notification in (2) is not required where:*
 - (a) *the increase is at the express request of the customer; or*
 - (b) *the increase is proposed by the firm, but the customer agrees to it at that time and wishes it to come into effect in less than 30 days or 28 days (as the case may be).*

[Note: paragraph 6.17 of ILG]

6.7.10 **R** Where a *customer* is at risk of financial difficulties, a *firm* under a *retail revolving credit* agreement or a *regulated credit agreement* for a credit card must, other than where a promotional rate of interest ends, not increase the rate of interest under the agreement.

[Note: paragraph 6.10 of ILG]

6.7.11 **G** For the purposes of **CONC 6.7.7 R** and **CONC 6.7.10 R** a *customer* is at risk of financial difficulties if the *customer*:

- (1) is two or more payments in arrears; or
- (2) has agreed a repayment plan with the *firm* in question; or
- (3) is in serious discussion with a *firm* which carries on *debt counselling* with a view to entering into a *debt management plan* and the *firm* has been notified of this fact.

[Note: paragraph 6.10 (box) of ILG]

6.7.12 **R** [deleted]

6.7.13 **R** Where a *firm* proposes to exercise a power under a *regulated credit agreement* for a credit card or store card to increase the interest rate, the *firm* must:

- (1) permit the *customer* sixty days, from the date of the *firm's* notice of the proposed increase during which period the *customer* may give notice to the *firm* requiring it to close the account;
- (2) permit the *customer* to pay off the outstanding balance at the rate of interest before the proposed increase and over a reasonable period; and
- (3) give notice to the *customer* of the rights in (1) and (2).

[Note: paragraphs 6.11 and 6.19 of ILG]

Interest rate variations

6.7.14 **R** Where a *firm* has a right to increase the interest rate under a *regulated credit agreement*, the *firm* must not increase the interest rate unless there is a valid reason for doing so.

[Note: paragraph 6.20 of ILG]

6.7.15 **G** Examples of valid reasons for increasing the rate of interest in **CONC 6.7.14 R** include:

- (1) recovering the genuine increased costs of funding the provision of *credit* under the agreement; and

- (2) a change in the risk presented by the *customer* which justifies the change in the interest rate, which would not generally include missing a single *repayment* or failing to repay in full on one or two occasions

[Note: paragraph 6.20 (box) of *ILG*]

6.7.16 **R** Where a *firm* increases a rate of interest based on a change in the risk presented by the *customer*, the *firm* must:

- (1) notify the *customer* that the rate of interest has been increased based on a change in risk presented by the *customer*; and
- (2) if requested by the *customer* provide a suitable explanation which may be a generic explanation for such increases.

[Note: paragraph 6.20 (box) of *ILG*]

“Buy now pay later” or similar offers

6.7.16A **R** (1) This *rule* applies only to *retail revolving credit* and *BNPL agreements* to which Part 6 of the *Payment Services Regulations* does not apply.

- (2) Where a *customer* has the benefit of a zero-percentage or low interest, introductory or promotional offer that depends on the *customer* meeting certain conditions, a *firm* must provide notice to the *customer* reminding them of any action they need to take to meet the conditions of the offer and the date by which this action must be taken, within a reasonable period before that date, taking account of the time at which the information may be most useful to the *customer*.

This notice must be provided in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*), in plain language and sufficiently prominent, so that it is likely to be seen and understood by the *customer*.

Partial repayments under “Buy now pay later” or similar offers

6.7.16B **R** (1) This *rule* applies where:

- (a) *BNPL credit* has been advanced to a *customer* under a *BNPL agreement*; and
- (b) the *customer* makes a repayment:
 - (i) of part of the *BNPL credit*;
 - (ii) on or before the date provided for in the *BNPL payment condition* that applies to that *BNPL credit*.

- (2) The *BNPL agreement* must have the effect that, in respect of so much of the *BNPL credit* as has been repaid, the *customer* is liable to pay no more than the *customer* would have been liable to pay if the *BNPL credit* had been repaid in full on or before the date provided for in the *BNPL payment condition*.

Rules on refinancing: general

6.7.17

R

- (1) In ■ CONC 6.7.18 R to ■ CONC 6.7.23 R “refinance” means to extend, or purport to extend, the period over which one or more *repayment* is to be made by a *customer* whether by:
- (a) agreeing with the *customer* to replace, vary or supplement an existing *regulated credit agreement*;
 - (b) exercising a contractual power contained in an existing *regulated credit agreement*; or
 - (c) other means, for example, granting an indulgence or waiver to the *customer*.
- (2) “Exercise forbearance” means to refinance a *regulated credit agreement* where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:
- (a) there is no charge in connection with the refinancing; or
 - (b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.
- (3) The term “refinance” within paragraph (1) does not include where under a *regulated credit agreement* repayable in instalments a *customer* requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.
- (4) For the purpose of ■ CONC 6.7.18R, ■ CONC 6.7.19R, ■ CONC 6.7.21G and ■ CONC 6.7.23R, the term “refinance” within paragraph (1) does not include where a *firm* extends, or purports to extend, the period over which one or more *repayment* is to be made by a *customer* in circumstances where the *firm* does this in order to follow the guidance entitled Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance, the guidance entitled Personal loans and coronavirus: Payment Deferral Guidance, the guidance entitled Motor finance agreements and coronavirus: Payment Deferral Guidance, the guidance entitled High-cost short-term credit and coronavirus: Payment Deferral Guidance, the guidance entitled Rent-to-own, buy-now-pay-later and pawnbroking agreements and coronavirus: Payment Deferral Guidance or the guidance entitled Coronavirus and customers in temporary financial difficulty: updated guidance for insurance and premium finance firms.

6.7.18

R

A *firm* must not encourage a *customer* to refinance a *regulated credit agreement* if the result would be the *customer's* commitments are not *sustainable*.

[Note: paragraph 4.27 of ILG]

6.7.19

R

A *firm* must not refinance a *customer's* existing *credit* with the *firm* (other than by exercising forbearance), unless:

- (1) the *firm* does so at the *customer's* request or with the *customer's* consent; and

- (2) the *firm* reasonably believes that it is not against the *customer's* best interests to do so.

[Note: paragraph 6.24 of *ILG*]

Rules on refinancing: high-cost short-term credit

6.7.20

R

Before a *firm* agrees to refinance *high-cost short-term credit*, it must:

- (1) give or send an information sheet to the *customer*; and
- (2) where reasonably practicable to do so, bring the sheet to the attention of the *customer* before the refinance;

in the form of the arrears information sheet issued by the *FCA* referred to in section 86A of the *CCA* with the following modifications:

- (3) for the title and first two sentences of the information sheet substitute:

“High-cost short-term loans

Failing to repay on time

Think carefully - rolling over or extending your loan may not be the best option and may make things worse.”; and

- (4) for the numbered points, the entirety of the ‘To keep in mind’ box and the ‘Doing nothing could make things worse’ subheading, substitute: “

- Think carefully before borrowing more.** Borrowing more money is likely to worsen your situation.

- Work out how much you owe.** To do this, you will need to make a list of all the organisations you owe money to. A debt adviser can help you

- Put priority debts first.** Some debts are more urgent than others because the consequences of not paying them can be more serious than for other debts, for example, mortgage, rent, council tax/ rates, or gas or electricity arrears. A debt adviser can help you to budget to keep your finances under control

Discuss options with your lender

- If you are having trouble paying back on time talk to your lender who can suggest ways to repay and make sure it is affordable for you.

- If you don’t, you may quickly face increased costs from interest or charges. Missed payments could affect your credit rating and make it more difficult to get credit in future.

Get free help and advice

- People that access advice resolve their issues more quickly than those that don’t and hundreds of thousands get free debt advice every year.

- Contact one of these organisations for free debt advice.”

- (5) in relation to an arrears sheet to be used by an *operator of an electronic system in relation to lending*:
 - (a) for the bullet point headed “Work out how much money you owe” substitute:

“**Work out how much money you owe.** To do this, you will need to make a list of all those you owe money to. A debt adviser can help you.”;
 - (b) for the title “ Discuss options with your lender” substitute

“Discuss options with your peer to peer lending platform (P2P platform)”;
 - (c) for the bullet point which begins “If you are having trouble ?” substitute

“If you are having trouble paying back on time talk to your P2P platform who can suggest ways to repay and make sure it is affordable for you.”.

[**Note:** Until the end of 30 June 2014, transitional provisions apply to ■ CONC 6.7.20 R: see ■ CONC TP 32]

6.7.21 **G** A *firm* should not refinance *high-cost short-term credit* where to do so is *unsustainable* or otherwise harmful.

[**Note:** paragraph 6.25 of *ILG*]

6.7.22 **G** A *firm* should not allow a *customer* to enter into consecutive agreements with the *firm* for *high-cost short-term credit* if the cumulative effect of the agreements would be that the *total amount payable* by the *customer* is *unsustainable*.

[**Note:** paragraph 6.25 (box) of *ILG*]

6.7.23 **R** A *firm* must not refinance *high-cost short-term credit* (other than by exercising forbearance) on more than two occasions.

[**Note:** Until the end of 30 June 2014, transitional provisions apply to ■ CONC 6.7.23 R: see ■ CONC TP 3.3]

Continuous payments authority: post agreement obligations.....

6.7.24 **R** A *firm* must not amend the terms of a *continuous payment authority* without first obtaining the *customer's* consent, after having fully explained to the *customer* the reason for the amendment.

[**Note:** paragraph 3.9miii of *DCG*]

6.7.25 **R** ■ CONC 6.7.24 R does not preclude the *firm* from:

- (1) making amendments pursuant to a variation clause to which the *customer* has previously given consent, after it was fully explained to the *customer* the reason for the amendment; or

(2) reducing or waiving payments unilaterally, for example, under a repayment plan, provided that this is explained to the *customer*.

[Note: paragraph 3.9miii of DCG]

6.7.25A **R**

(1) Paragraph (2) applies if an *individual* other than the *borrower* (in this rule referred to as “the guarantor”) has:

(a) provided a guarantee or an indemnity (or both) in relation to:

(i) a *regulated credit agreement*; or

(ii) a *P2P agreement* in respect of which the *borrower* is an *individual*; and

(b) granted a *continuous payment authority*.

(2) ■ CONC 6.7.24R and ■ CONC 6.7.25R apply in respect of the guarantor as if references to the *customer* were references to the guarantor.

(3) For the purposes of this rule, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

6.7.26 **R**

A *firm* must use the correct category code and identifier when presenting a payment request to the *payment service provider*.

[Note: paragraph 3.9miii of DCG]

6.7.26A **R**

■ CONC 6.7.27R to ■ 6.7.40G do not apply to a *firm* in respect of a *customer*, who the *firm* has allowed to defer (in whole or part) the making of *repayments* under a *regulated credit agreement* for a credit card or *retail revolving credit* in the circumstances and for the duration set out in the guidance entitled Credit cards (including retail revolving credit) and coronavirus: temporary guidance for firms, the guidance entitled Credit cards (including retail revolving credit) and coronavirus: updated temporary guidance for firms or the guidance entitled Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance, for the period of the deferment.

Credit cards and retail revolving credit: persistent debt

6.7.27 **R**

(1) This rule applies to a *firm* with respect to communicating with a *customer* about, and receiving payments or exercising rights under, a *regulated credit agreement* for a credit card or *retail revolving credit*, if the *firm* assesses that the amount the *customer* has paid to the *firm* towards the credit card balance or *retail revolving credit* balance over the immediately preceding 18-month period comprises a lower amount in principal than in interest, fees and charges.

(2) A *firm* must assess whether the condition in paragraph (1) is met at least once a *month*.

(3) The rule in paragraph (1) does not apply:

(a) where the balance on the credit card or under the *retail revolving credit* agreement was below £200 at any point in the 18-month period; or

- (b) where the *firm* has sent a communication to the *customer* in accordance with paragraph (4) in the preceding 18 months in relation to the credit card or *retail revolving credit* facility; or
 - (c) where the *firm* is taking steps to treat the *customer* with forbearance under ■ CONC 6.7.37R, is otherwise taking equivalent or more favourable steps in relation to the *customer's* account, or ■ CONC 6.7.39R applies.
- (4) Where the *rule* in paragraph (1) applies in relation to a credit card *customer* or a *retail revolving credit customer*, a *firm* must, in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) and in plain language:
- (a) notify the *customer* that, in the preceding 18 months, the amount the *customer* paid comprised a lower amount in principal than in interest, fees and charges;
 - (b) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;
 - (c) encourage the *customer* to contact the *firm* to discuss the *customer's* financial circumstances and whether the *customer* can increase the amount of payments without an adverse effect on the *customer's* financial situation;
 - (d) warn the *customer* of the potential implications if the *customer's* payments comprise a lower amount in principal than in interest, fees and charges in two consecutive 18-month periods; and
 - (e) provide contact details for *not-for-profit debt advice bodies* and encourage the *customer* to contact one of them.

6.7.28

G

- (1) For the purposes of:
- (a) ■ CONC 6.7.27R, ■ CONC 6.7.30R, ■ CONC 6.7.34G, ■ CONC 6.7.39R and ■ CONC TP 8, "principal" comprises only the amount of *credit* drawn down by the *customer* under the credit card agreement or *retail revolving credit* agreement, and does not include any interest, fees or charges added to the account; and
 - (b) ■ CONC 6.7.27R(3)(c), ■ CONC 6.7.29R(5) and ■ CONC 6.7.30R(4), where a *Debt Respite moratorium* is in effect for the *customer's* *retail revolving credit* or credit card debt, and a *firm* is complying with its obligations pursuant to the moratorium, the *firm* will be taking steps equivalent to, or more favourable than, those required under ■ CONC 6.7.37R with respect to that *moratorium debt*, for as long as the moratorium is in effect.
- (2) The potential implications of which the *firm* should warn the *customer* under ■ CONC 6.7.27R(4)(d) include the possibility that the account may be suspended, as well as any other steps that the *firm* might take, and the possible impact on the *customer's* credit file.
- (3) ■ CONC 6.7.27R(4) does not specify a particular form of words to be used, and *firms* have discretion to tailor the language and tone of the communication required by that *rule* to the circumstances of the individual *customer*.

6.7.29

R

- (4) Where the *firm* complies with ■ 6.7.27R(4)(e), the *firm* may in addition provide the *customer* with the name and contact details of one or more other *authorised persons* who have *permission* to carry on *debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.
- (1) This *rule* applies in respect of a credit card *customer* or a *retail revolving credit customer* to whom a *firm* is required to have sent a communication under ■ CONC 6.7.27R(4).
- (2) The steps required under paragraphs (3) and (4) must be taken:
- (a) no earlier than nine *months* after; and
 - (b) no later than 10 *months* after,
- the date on which the requirement to send a communication under ■ CONC 6.7.27R arose.
- (3) The *firm* must:
- (a) consider the pattern of payments made by the *customer* over the period beginning on the date on which the requirement to send a communication under ■ CONC 6.7.27R(1) arose and ending on the date the *firm* takes steps under paragraph (2); and
 - (b) assume that this will be representative of the *customer's* payment pattern in the entire 18-*month* period immediately following the date on which the requirement to send a communication under ■ CONC 6.7.27R(1) arose.
- (4) If the analysis in (3) indicates that it is likely that ■ CONC 6.7.30R will apply with respect to the *customer*, the *firm* must repeat the steps required under ■ CONC 6.7.27R(4).
- (5) The *rule* in paragraph (1) does not apply where the *firm* is already taking steps equivalent to, or more favourable than, those required under ■ CONC 6.7.37R.

6.7.30

R

- (1) This *rule* applies:
- (a) in respect of a credit card *customer* or a *retail revolving credit customer* to whom a *firm* is required to have sent a communication under ■ CONC 6.7.27R (1); and
 - (b) where the amount that the *customer* has paid to the *firm* towards the credit card or *retail revolving credit* balance, over the 18-*month* period immediately following the date on which the requirement to send a communication under ■ CONC 6.7.27R(1) arose, comprises a lower amount in principal than in interest, fees and charges.
- (2) This *rule* does not apply:
- (a) where the balance on the credit card or *retail revolving credit* was below £200 at any point in the 18-*month* period;
 - (b) to any part of the balance on the credit card or *retail revolving credit* that has previously been subject to the requirements of paragraph (3).

- (3) A *firm* must take reasonable steps to assist a credit card *customer* who falls under paragraph (1) to repay the balance on their credit card or *retail revolving credit* as it stands at the end of the period specified in that paragraph more quickly and in a way that does not adversely affect the *customer's* financial situation.
- (4) The *firm* is not required to take steps under (3) or ■ CONC 6.7.31R where the *firm* is already taking steps equivalent to, or more favourable than, those required under ■ CONC 6.7.37R, provided that the *firm* continues to take those steps.

6.7.31

R

Where a *firm* is required to assist a *customer* to repay more quickly under ■ CONC 6.7.30R(3), the *firm* must contact the *customer* to:

- (1) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;
- (2) provide contact details for *not-for-profit debt advice bodies* and encourage the *customer* to contact one of them;
- (3) set out options for the *customer* to increase payments and request that the *customer*, within a specified reasonable period, respond to either:
 - (a) confirm that the *customer* will increase payments in accordance with one of the options; or
 - (b) where applicable, confirm that the options proposed are not *sustainable* for the *customer*; and
- (4) inform the *customer* that if the *firm* does not receive a response to the request under paragraph (3) in the time specified, the *firm* will suspend or cancel the use of the credit card or *retail revolving credit* facility.

6.7.32

G

- (1) The options a *firm* may set out under ■ CONC 6.7.31R(3) in relation to a credit card or *retail revolving credit* include, for example, increasing the amount of *monthly* payments under a repayment plan, or transferring the balance to a fixed-sum unsecured personal loan.
- (2) ■ CONC 6.7.31R does not prevent a *firm* from treating the *customer* more favourably, for example by writing off the balance on the account.
- (3) ■ CONC 6.7.31R does not specify a particular form of words to be used, and *firms* have discretion to tailor the language and tone of the communication required by that *rule* to the circumstances of the individual *customer*.
- (4) Where the *firm* complies with ■ CONC 6.7.31R(2), the *firm* may in addition provide the *customer* with the name and contact details of one or more other *authorised persons* who have *permission* to carry on *debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.

- 6.7.33** **G** (1) The aim of the options a *firm* sets out under ■ CONC 6.7.31R(3) should be that the *customer* repays the balance in a reasonable period.
- (2) The *FCA* expects a “reasonable period” under paragraph (1), ■ CONC 6.7.37R and ■ CONC 6.7.38G to usually be between three and four years. Only in exceptional circumstances should the repayment period extend beyond four years; and even in such cases, the extension should not be significant and there should be no additional cost to the *customer* as a result of the repayment period extending beyond four years. When setting the reasonable repayment period, *firms* may take into account the amount of the outstanding balance and minimum repayment amount. For example, where balances are relatively low this could point to a shorter reasonable repayment period.
- 6.7.34** **G** References in ■ CONC 6.7.27R, ■ CONC 6.7.31R(3) and ■ CONC 6.7.32G(1) to a *customer* increasing payments to the *firm* include circumstances where the amount a *customer* pays remains fixed at the same amount the *customer* was previously paying but, assuming there is no further spending on the account, represents an increase in the percentage of the outstanding principal that is repaid each *month* as the balance reduces.
- 6.7.35** **R** (1) Where a *customer* does not respond to a *firm’s* request under ■ CONC 6.7.31R(3), a *firm* must, at the end of the period specified in the request, suspend or cancel the *customer’s* use of the credit card or *retail revolving credit* facility.
- (2) Where a *customer* confirms that one or more of the options proposed under ■ CONC 6.7.31 R(3) is *sustainable*, but states that they will not make the increased payments, a *firm* must suspend or cancel the *customer’s* use of the credit card or *retail revolving credit* facility.
- (3) Where a *firm* suspends the *customer’s* use of the credit card or *retail revolving credit* facility under paragraph (1) and the *customer* subsequently responds to the *firm’s* request under ■ CONC 6.7.31R(3), the *firm* may withdraw the suspension if this would be in line with the other provisions in this section.
- 6.7.36** **G** Where a *firm* suspends or cancels the *customer’s* use of the credit card or *retail revolving credit* facility under ■ CONC 6.7.35R the *firm* is not, unless the *customer* responds to the *firm’s* request under ■ CONC 6.7.31R(3), required to take further steps under ■ CONC 6.7.37R to ■ CONC 6.7.39R. *Firms* are however reminded of ■ CONC 6.7.3AR, which requires *firms* to take appropriate action where there are signs of actual or possible financial difficulties, and ■ CONC 7.3.4R, which requires *firms* to treat *customers* in or approaching arrears or in default with forbearance and due consideration.
- 6.7.37** **R** Where a *customer*:
- (1) confirms to the *firm* that the options set out under ■ CONC 6.7.31R(3) are *unsustainable*; or
- (2) informs the *firm* that they will increase payments in accordance with one of the options proposed under ■ CONC 6.7.31G(3) but the patterns

of payments actually made under the repayment plan after it is put in place, or other indicators, show that the *customer* is unlikely to repay the balance in a reasonable period,

the *firm* must treat the *customer* with forbearance and due consideration.

6.7.38

G

- (1) The steps a *firm* takes to treat a *customer* with forbearance under ■ CONC 6.7.37R should have the aim of assisting the *customer* to make *sustainable repayments* to repay the outstanding balance in a reasonable period, and may include reducing, waiving or cancelling any interest, fees or charges.
- (2) The *FCA* expects that it will generally be necessary for *firms* to suspend or cancel the use of the credit card or *retail revolving credit* facility of a *customer* that the *firm* is required to treat with forbearance under ■ CONC 6.7.37R with a view to ensuring the *customer* repays the outstanding balance in a reasonable period. This expectation does not apply, however, where the suspension or cancellation of use of the credit facility would cause a significant adverse impact on the *customer's* financial situation, for example where the *customer* depends on the credit facility for meeting essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills) or the purchase of essential items (which may include but is not limited to items such as school uniform, baby essentials or a refrigerator). Equally, the *FCA* considers that it will generally not be appropriate to withdraw the suspension of the use of a *customer's* credit card under ■ CONC 6.7.35R(3) if the *firm* is required to treat the *customer* with forbearance under ■ CONC 6.7.37R.

6.7.39

R

Where a *firm* does not suspend or cancel the use of the credit card or *retail revolving credit* facility of a *customer* falling under ■ CONC 6.7.30R, the *firm* must take reasonable steps to ensure that the *customer* does not, in the 18-month period immediately following, repay an amount to the *firm* towards the credit card or *retail revolving credit* balance that comprises a lower amount in principal than in interest, fees and charges in relation to any spending on the card in this period.

6.7.40

G

Compliance with any of the requirements in ■ CONC 6.7.27R to ■ CONC 6.7.39R does not remove or reduce the obligation on a *firm* to:

- (1) take appropriate action where there are signs of actual or possible financial difficulties under ■ CONC 6.7.3AR; or
- (2) treat *customers* in or approaching arrears or in default with forbearance and due consideration under ■ CONC 7.3.4R,

and vice versa.

Authorised non-business overdraft agreements: reductions in credit limits

- 6.7.41 **R** A firm must provide an easy, efficient and prompt process by which a borrower under an authorised non-business overdraft agreement may request:
- (1) a reduction in the *credit limit* under that agreement; or
 - (2) to terminate the *authorised non-business overdraft agreement* but retain the current account that it is associated with, where the terms of the agreement permit this.
- 6.7.42 **G** A firm is not required to approve all requests from a borrower to reduce their *credit limit* or to terminate their *authorised non-business overdraft agreement*. When considering such a request, a firm should have regard to its obligation to treat *customers* fairly. In many circumstances it would be unfair to require a borrower to retain an unwanted facility. The following are examples of when it may be fair to refuse a request:
- (1) the current account that the *authorised non-business overdraft agreement* is associated with is offered on terms that it must be associated with an *authorised non-business overdraft agreement*, or with an *authorised non-business overdraft agreement* with a particular credit limit; or
 - (2) the borrower's indebtedness exceeds the reduced *credit limit* requested; or
 - (3) the borrower has requested termination of an *authorised non-business overdraft agreement* but there are sums outstanding under that agreement.

6.8 Post contract business practices: credit brokers

Application

6.8.1 **R** This section applies to a *firm* with respect to *credit broking*.

Business practices

6.8.2 **G** Where a *firm* takes on responsibility for giving information to a *customer* or receiving information from a *customer* in accordance with provisions of the CCA (for example, supplying a copy of an executed *regulated credit agreement* under section 61A of the CCA) the *firm* should ensure it is familiar with the relevant statutory requirements and has adequate system and procedures in place to comply with the provision in question.

Refunds of brokers' fees

- 6.8.3 **G**
- (1) Under section 155 of the CCA an *individual* has a right to a refund of the *firm's* fee (less £5) (or for that fee not to be payable) where the *individual* has not entered into an agreement to which section 155 applies within six *months* of an introduction:
 - (a) to a source of *credit* or of bailment (or in Scotland of hire); or
 - (b) to another *firm* that carries on *credit broking* of the kind specified in article 36A(1)(a) to (c) of the RAO disregarding the effect of paragraph (2) of that article (that is, the effecting of an introduction to a *lender* or an *owner*, or to another *person* who effects such introductions by way of business).

[Note: paragraph 6.1 of CBG]
 - (2) It is immaterial for the purposes of section 155 of the CCA why no agreement has been entered into (for example, an *individual* should be entitled to a refund where the *individual* decides for any reason not to enter into an agreement within the relevant time period).

[Note: paragraph 6.2 of CBG]
 - (3) Section 155 does not apply where the introduction is for a *regulated mortgage contract* or a *home purchase plan* and the *person* charging the fee is an *authorised person* or an *appointed representative*. Arranging and advising in relation to *regulated mortgages contracts* and *home purchase plans* are *regulated activities* under the *Regulated Activities Order* and carrying on those activities would require *permissions* covering those activities.

[Note: paragraph 6.4 of CBG]

- (4) In relation to a *credit agreement* the refund would apply to any sum which is an amount that is or would enter in to the *total charge for credit* paid or payable to or via the *credit broker* whether or not the *firm* describes it as a fee or commission.

[Note: paragraphs 6.11 and 6.13 of CBG]

- (5) Where an *individual* withdraws from a *regulated credit agreement* under section 66A of the CCA or cancels a cancellable agreement (see section 67 of the CCA) under section 69 of the CCA the agreement is treated as never have been entered into and hence the period referred to in section 155 continues to apply in these circumstances.

[Note: paragraph 6.10 of CBG]

6.8.4 **R** Where section 155 of the CCA applies, a *firm* must respond promptly to a request for a refund; this includes making payment of the refund promptly if a refund is payable.

[Note: paragraph 6.17 of CBG]

6.8.4A **R** If a *customer* has not entered into an agreement referred to in section 155(2) of the CCA within six months of the *customer* being introduced by the *firm* to a potential source of *credit* or of bailment (or in Scotland of hire), or to another *firm* that carries on *credit broking* of the kind specified in article 36A(1)(a) to (c) of the RAO (disregarding the effect of paragraph (2) of that article), as soon as reasonably practicable after the expiry of that six-month period a *firm* must by any method clearly bring to the *customer's* attention:

- (1) the right to request a refund under section 155 of the CCA; and
- (2) how to exercise the right to request the refund.

[Note: paragraph 6.19d of CBG]

6.8.4B **G** The FCA would consider it to be reasonably practicable to comply with **CONC 6.8.4A R** within five working days of the expiry of the six-month period.

6.8.5 **G**

- (1) An *individual* does not need to refer to the right under section 155 of the CCA in order to be entitled to a refund.
- (2) A *firm* should respond promptly to a request for a refund. *Firms* are reminded of the *rule* in **CONC 11.1.12R** to return sums without undue delay, and within 30 calendar days, on cancellation of a *distance contract*.
- (3) In circumstances where *individuals* request refunds and the *firm* knows, or ought to know, that agreements to which section 155 applies would not be entered into within six *months*, the *firm* should not make the *individuals* wait for the six *month* period to elapse before making the refund.

[Note: paragraphs 6.17 and 6.18 of *CBG*]

Chapter 7

Arrears, default and recovery (including repossessions)

7.1 Application

Who? What?

- 7.1.1** **R** This chapter applies, unless otherwise stated in or in relation to a *rule*, to:
- (1) a *firm* with respect to *consumer credit lending*;
 - (2) a *firm* with respect to *consumer hiring*;
 - (3) a *firm* with respect to *operating an electronic system in relation to lending*, in relation to a *borrower* under a *P2P agreement*;
 - (4) a *firm* with respect to *debt collecting*.
- 7.1.1A** **R**
- (1) To the extent that a *rule* in this chapter does not already apply to *TP firms* as a result of **■ GEN 2.2.26R**, it applies to them so far as the *rule* would have applied were it in effect before *IP completion day*.
 - (2) To the extent that a *rule* in this chapter does not already apply to *Gibraltar-based firms* as a result of **■ GEN 2.3.1R**, it applies to them so far as the *rule* would have applied were it in effect before *IP completion day*.
- 7.1.2** **G** The following sections provide otherwise for application:
- (1) **■ CONC 7.12** (lenders' responsibilities in relation to debt) applies only to *firms* in respect of *consumer credit lending* or in respect of activity that would be *consumer credit lending* but for article 60C(4A) of the *Regulated Activities Order*;
 - (2) **■ CONC 7.17** to **■ CONC 7.19** apply only to *firms operating electronic systems in relation to lending* in relation to *borrowers* under *P2P agreements* as set out in those sections.
- 7.1.3** **G**
- (1) In accordance with **■ CONC 1.2.2 R** *firms* must ensure that their employees and agents comply with *CONC* and must take reasonable steps to ensure that other *persons* acting on the *firm's* behalf act in accordance with *CONC*.
 - (2) The *rule* in **■ CONC 1.2.2 R** is particularly important in relation to the requirements in **■ CONC 7**, for example, in dealing with an *individual*

from whom the *person* referred to in the *rule* is seeking to collect a debt.

- (3) In this chapter the expression “arrears” includes any shortfall in one or more payment due from a *customer* under an agreement to which the chapter applies.

7.1.3A

R

In this chapter, the expression “*regulated credit agreement*” includes a *credit agreement* that is an exempt agreement by virtue of article 60C(4A) of the *Regulated Activities Order* except for the purposes of the following:

- (1) ■ CONC 7.5.1G;
- (2) ■ CONC 7.6; and
- (3) ■ CONC 7.7.4G.

Agreements where there is a guarantor etc

7.1.4

R

- (1) In this chapter, except for ■ CONC 7.6.15AG:

- (a) a reference to a *borrower*, a *customer* or a *hirer* includes a reference to an *individual* other than the *borrower* or the *hirer* (in this chapter, referred to as “the guarantor”) who has provided a guarantee or an indemnity (or both) in relation to:
 - (i) a *regulated credit agreement*; or
 - (ii) a *regulated consumer hire agreement*; or
 - (iii) a *P2P agreement* in respect of which the *borrower* is an *individual*;

where it would not do so but for this *rule*;

- (b) a reference (other than in this *rule*) to a *credit agreement*, a *consumer hire agreement* or a *P2P agreement* includes a reference to the document that includes the guarantee or the indemnity (or both);
 - (c) a reference to a *repayment* includes a reference to a payment due under the guarantee or under the indemnity;
 - (d) a reference to paying or repaying the debt includes a reference to making (in whole or in part) a payment due under the guarantee or under the indemnity; and
 - (e) a reference to the adequate explanation required by ■ CONC 4.6.2R includes a reference to the adequate explanation required by ■ CONC 4.6.5R.
- (2) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.
- (3) This *rule* does not apply to ■ CONC 7.3.1G, ■ CONC 7.4.1R, ■ CONC 7.4.2R, ■ CONC 7.5.1G, ■ CONC 7.6.2AR, ■ CONC 7.6.2BG, ■ CONC 7.15.3G, ■ CONC 7.15.4R, ■ CONC 7.15.5G, or ■ CONC 7.17 to ■ CONC 7.19.
- (4) A reference in this chapter to a *customer* or *borrower* does not include the guarantor under a *credit agreement* that is an exempt

agreement by virtue of article 60C(4A) of the *Regulated Activities Order*.

7.1.5

G

In relation to ■ CONC 7.1.4R(1)(a), *firms* are reminded that the definitions of *customer* and *borrower* include, in relation to *debt collecting* and *debt administration*, a *person* providing a guarantee or indemnity under the agreement (other than a *credit agreement* that is an exempt agreement by virtue of article 60C(4A) of the *Regulated Activities Order*). (See ■ CONC 7.3.1G(2) and ■ CONC 7.3.1G(3).).



7.2 Clear, effective and appropriate policies and procedures in respect of customers in or approaching arrears or in default

Arrears and default policies

- 7.2.1** **R** A *firm* must establish and implement clear, effective and appropriate policies and procedures for:

 - (1) dealing with *customers* who are in or approaching arrears or in default;

[Note: paragraph 7.2 of *ILG*]

 - (2) the fair and appropriate treatment of *customers*, who the *firm* understands or reasonably suspects to be vulnerable.

[Note: paragraphs 7.2 and 7.2(box) of *ILG* and 2.2 (box) of *DCG*]

- 7.2.2** **G** *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of vulnerable *customers*.

[Note: paragraph 2.2 (box) of *DCG*]

- 7.2.2A** **G** In developing policies and procedures in accordance with **CONC 7.2**, a *firm* should have regard to the *FCA's* Guidance for firms on the fair treatment of vulnerable customers (FG21/1) (<https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>).

- 7.2.3** **G** In developing procedures and policies for dealing with *customers* who may not have the mental capacity to make financial decisions, *firms* may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines "Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt".

[Note: paragraph 3.7r (box) of *DCG*]

- 7.2.4** **R** A *firm* must ensure that the effectiveness of any policies and procedures put in place further to **CONC 7.2.1R**, and the *firm's* compliance with them, is reviewed at appropriate intervals.

7.2.5

G

In order to comply with its obligations under ■ CONC 7.2, a *firm* should ensure that the review required by ■ CONC 7.2.4R includes consideration of the full extent of support provided to some *customers* under this chapter, and does not only assess individual *customer* interactions in isolation.



7.3 Treatment of customers in or approaching arrears or in default (including repossessions): lenders, owners and debt collectors

7.3.1

G

(1) In relation to debt collecting and debt administration, the definition of customer refers to an individual from whom the payment of a debt is sought; this would include where a firm mistakenly treats an individual as the borrower under an agreement and mistakenly or wrongly pursues the individual for a debt.

[Note: paragraph 1.12 of DCG]

(2) In relation to debt collecting and debt administration, the definitions of customer and borrower are given extended meanings to include, as well as those other people they generally include, a person providing a guarantee or indemnity under a credit agreement and also a person to whom rights and duties under the agreement are passed by assignment or operation of law. This reflects article 39M of the Regulated Activities Order.

(3) However, in accordance with CONC 7.1.4R(4), with respect to debt collecting, the definitions of customer and borrower do not include the guarantor under a credit agreement that is an exempt agreement by virtue of article 60C(4A) of the Regulated Activities Order.

Dealing fairly with customers in or approaching arrears or in default

7.3.2

G

When dealing with customers in or approaching arrears or in default, a firm should pay due regard to its obligations under Principle 12 (Consumer Duty) and PRIN 2A, or Principle 6 (Customers' interests), as applicable.

[Note: paragraphs 7.12 of ILG and 2.2 of DCG]

Forbearance and due consideration

7.3.2A

R

[deleted]

7.3.3

G

Where a customer under a regulated credit agreement fails to make an occasional payment when it becomes due, a firm should, in accordance with Principle 12 and PRIN 2A, or Principle 6, as applicable, allow for such unmade payments to be made within the original term of the agreement unless:

- (1) the *firm* reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the *total amount payable* to be *unsustainable* or otherwise cause a *customer* to be in financial difficulties; or

[Note: paragraph 4.7 of *ILG*]

- (2) the *firm* reasonably believes that terminating the agreement will mitigate such adverse consequences for the *customer* and before terminating the agreement it explains this to the *customer*.

7.3.4

R

A *firm* must treat *customers* in or approaching arrears or in default with forbearance and due consideration.

[Note: paragraphs 7.3 and 7.4 of *ILG* and 2.2 of *DCG*]

7.3.4A

G

A *firm* should regard a *customer* as approaching arrears when the *customer* indicates to the *firm* that they are at risk of not meeting one or more *repayments* when they fall due.

7.3.4B

R

When determining appropriate forbearance and treating the *customer* with due consideration, a *firm* must take into account the individual circumstances of the *customer* of which the *firm* is or should be aware.

7.3.5

G

Examples of treating a *customer* with forbearance and due consideration would include the *firm* doing one or more of the following, as may be appropriate to the *customer* in the circumstances:

- (1) suspending, reducing, waiving or cancelling any further interest or charges (for example, when a *customer* provides evidence of financial difficulties and is unable to meet *repayments* as they fall due or is only able to make token *repayments*, where in either case the level of debt would continue to rise if interest and charges continue to be applied);

[Note: paragraph 7.4 (box) of *ILG*]

- (2) allowing deferment of payment of arrears:
 - (a) where immediate payment of arrears may increase the *customer's repayments* to an *unsustainable* level; or
 - (b) provided that doing so does not make the term for the *repayments* unreasonably excessive;
- (3) accepting no payments, reduced payments or token payments for a reasonable period of time from a *customer* who demonstrates that meeting the *customer's* existing debts would mean not being able to meet the *customer's priority debts* or other essential living expenses;
- (4) agreeing a repayment arrangement with the *customer* that allows the *customer* a reasonable period of time to repay the debt;
- (5) transferring the debt to an alternative *credit agreement* (refinancing) to help the *customer* reduce the debt over a reasonable period of

		<p>time in such a way that does not adversely affect the <i>customer's</i> financial situation;</p> <p>(6) in relation to a <i>firm</i> that takes any article in <i>pawn</i> under a <i>regulated credit agreement</i>:</p> <p>(a) where the redemption period has not ended, extending the redemption period; or</p> <p>(b) where the redemption period has ended, refraining from giving the <i>customer</i> notice of intention to sell an item of <i>pawn</i> for a reasonable further period, or if notice of intention to sell has been given, suspending the sale for a reasonable further period.</p>	
7.3.5-A	G	A <i>firm</i> should only take the steps in ■ CONC 7.3.5G(6) where it is in the <i>customer's</i> interests. In considering whether it is in the <i>customer's</i> interests, a <i>firm</i> should consider the realistic prospects of a <i>customer</i> recovering the item of <i>pawn</i> and the equity in the item.	
7.3.5A	G	The examples in ■ CONC 7.3.5G are not exhaustive.	
7.3.5B	R	A <i>firm</i> must take all reasonable steps to ensure that any repayment arrangements agreed with <i>customers</i> (see ■ CONC 7.3.5G(4)) are sustainable.	
7.3.5C	G	<p>(1) A repayment arrangement is unlikely to be sustainable if it has the result that the <i>customer</i> cannot meet their <i>priority debts</i> and essential living expenses.</p> <p>(2) <i>Priority debts</i> and essential living expenses include, but are not limited to, payments for mortgage, rent, council tax, food and utility bills.</p>	
7.3.5D	R	Where a <i>firm</i> assesses income and expenditure, it must do so in an objective manner.	
7.3.5E	G	When complying with ■ CONC 7.3.5DR:	<p>(1) the assessment should be informed by sufficiently detailed information;</p> <p>(2) a <i>firm</i> may have regard to the spending guidelines in the Standard Financial Statement or an equivalent tool; and</p> <p>(3) where the <i>customer</i> is borrowing for business purposes, a <i>firm</i> may take into account information relating to the <i>customer's</i> business, including its cash flow.</p>
7.3.5F	G	A <i>firm</i> should have clear written policies setting out how and in what circumstances it conducts income and expenditure assessments.	

- 7.3.5G** **R** (1) This *rule* applies where:
- (a) a *firm* has put in place a repayment arrangement as a forbearance measure; and
 - (b) the *customer* is meeting the terms of that arrangement.
- (2) The *firm* must reduce, waive or cancel any further interest or charges to the extent necessary to ensure that the level of debt under the arrangement does not rise for the period of that arrangement.
- 7.3.5H** **G** The extent to which the *firm* is required to reduce, waive or cancel any further interest or charges may vary over the term of the arrangement. If a *customer's* circumstances change so that they can pay larger amounts under the repayment arrangement, the *firm* will not be required to waive as much interest, fees or charges to prevent the balance from escalating.
- 7.3.5I** **R** A *firm* must take reasonable steps to ensure that any forbearance or due consideration provided remains appropriate.
- 7.3.5J** **G** What is reasonable in any given case will depend on the *customer's* circumstances and the nature of the forbearance or due consideration provided, but may include reviews at appropriate intervals and responding as necessary. It will also involve reacting appropriately to any relevant information the *firm* is otherwise made aware of, such as correspondence from a debt adviser.
- 7.3.6** **G** Where a *customer* is in default or in arrears difficulties, a *firm* should allow the *customer* reasonable time and opportunity to repay the debt.
- [Note: paragraph 2.2 of DCG]
- 7.3.7** **G** [deleted]
- 7.3.7A** **G** (1) If a *customer* is in or approaching arrears or in default, the *firm* should, where appropriate:
- (a) inform the *customer* that free and impartial money guidance and debt advice is available from *not-for-profit debt advice bodies* and can be accessed through a range of delivery channels, including digital tools;
 - (aa) effectively communicate to the *customer* the potential benefits of accessing money guidance or free and impartial debt advice from *not-for-profit debt advice bodies*; and
 - (b) refer the *customer* to a *not-for-profit debt advice body*.
- (2) A *firm* may refer the *customer* to a *not-for-profit debt advice body* by, for example, providing the *customer* with a copy of the current arrears information sheet under section 86 of the CCA, or with the name and contact details of a *not-for-profit debt advice body* or *MoneyHelper*; or directly transferring the *customer's* call to a *not-for-profit debt advice body*.

- (3) In addition, the *firm* may provide the *customer* with the name and contact details of another *authorised person* who has *permission* for *debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.
- (4) Where possible, a *firm* should make available to the *customer* a record of any income and expenditure assessment that the *firm* has made to enable the *customer* to share the record with other lenders and debt advice providers.
- (5) A *firm* should consider whether the *customer* would benefit from a specialist source of debt advice. For example, a self-employed *customer* may benefit from being made aware of business debt advice providers.
- (6) When considering how to provide appropriate help and support to *customers*, a *firm* may have regard to the Money and Pensions Service Strategic toolkit for creditors.

7.3.8

G

An example of where a *firm* is likely to contravene *Principle 12* and ■ PRIN 2A, or *Principle 6*, as applicable, and ■ CONC 7.3.4 R is where the *firm* does not allow for alternative, affordable payment amounts to repay the debt due in full, where the *customer* is in or approaching arrears or in default and the *customer* makes a reasonable proposal for repaying the debt or a *debt counsellor* or another *person* acting on the *customer's* behalf makes such a proposal.

[Note: paragraphs 7.16 of *ILG* and 3.7j of *DCG*]

7.3.9

R

A *firm* must not operate a policy of refusing to negotiate with a *customer* who is developing a repayment plan.

[Note: paragraph 3.9d (box) of *DCG*]

7.3.10

R

A *firm* must not pressurise a *customer*:

- (1) to pay a debt in one single or very few *repayments* or in unreasonably large amounts, when to do so would have an adverse impact on the *customer's* financial circumstances;

[Note: paragraph 7.18 of *ILG*]

- (2) to pay a debt within an unreasonably short period of time; or

[Note: paragraphs 3.7i of *DCG* and 7.18 of *ILG*]

- (3) to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.

[Note: paragraph 3.7b of *DCG*]

7.3.10A

G

- (1) An example of behaviour by or on behalf of a *firm* which is likely to contravene ■ CONC 7.3.10R and *Principle 12* and ■ PRIN 2A, or *Principle 6*, as applicable, is pressurising a *customer* to raise funds to repay a

debt by arranging the receipt of a lump sum from the *customer's pension scheme*.

(2) *Firms* are also reminded of ■ PERG 12.6G which contains *guidance on the regulated activity of advising on conversion or transfer of pension benefits*.

7.3.11 **R** A *firm* must suspend the active pursuit of recovery of a debt from a *customer* for a reasonable period where the *customer* informs the *firm* that a *debt counsellor* or another *person* acting on the *customer's* behalf or the *customer* is developing a repayment plan.

[Note: paragraphs 7.12 of *ILG* and 3.7m of *DCG*]

7.3.12 **G** A "reasonable period" in ■ CONC 7.3.11 R should generally be for thirty days where there is evidence of a genuine intention to develop a plan and the *firm* should consider extending the period for a further thirty days where there is reasonable evidence demonstrating progress to agreeing a plan. Where appropriate, a *firm* can take into account the period of time that the debt was subject to a *Debt Respite moratorium* when determining what is a reasonable period.

[Note: paragraphs 7.12 (box) *ILG* and 3.7m of *DCG*]

7.3.13 **G** A *firm* seeking to recover debts should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

[Note: paragraphs 7.16 (box) of *ILG* and 3.7k of *DCG*]

Information provided to customers

7.3.13A **G**

- (1) When engaging with *customers* in or approaching arrears or in default, *firms* are reminded of their obligations to communicate with *customers* in accordance with *Principle 12* and ■ PRIN 2A, or *Principle 7*, as applicable.
- (2) A *firm* should make available to *customers* in or approaching arrears or in default, timely, clear and understandable information which:
 - (a) takes into account the individual circumstances of the *customer*;
 - (b) is sufficient to enable the *customer* to understand their financial position in relation to their debt, including how it is reported to the *customer's* credit file; and
 - (c) is sufficient to enable the *customer* to understand their options in relation to their debt, including the potential impact of any forbearance or other support on their overall balance and how it will be reported to the *customer's* credit file.
- (3) A *firm* should consider the most appropriate way to engage and communicate with a *customer*, and support *customers* to engage through appropriate channels, changing the channel if necessary to enable the *customer* to engage with the *firm* effectively.

Proportionality

- 7.3.14 **R** (1) A *firm* must not take disproportionate action against a customer in arrears or default.

[Note: paragraphs 7.14 (box) of *ILG* and 3.7t of *DCG*]
- (2) In accordance with (1) a *firm* must not, in particular, apply to court for an order for sale or submit a bankruptcy petition, without first having fully explored any more proportionate options.

[Note: paragraph 7.14 (box) of *ILG*]

- 7.3.15 **G** A *firm* should not make undue, excessive or otherwise unfair use of statutory demands (within the meaning of section 268 of the Insolvency Act 1986) when seeking to recover a debt from a *customer*.

[Note: paragraphs 7.10 of *ILG* and 3.7n of *DCG*]

Enforcement of debts

- 7.3.16 **G** A *firm* should not take steps to enforce a debt if it is aware that the *customer* is subject to a bankruptcy order (or in Scotland where sequestration is awarded in relation to the *customer*), a debt relief order or an individual voluntary arrangement (or, in Scotland, a protected trust deed or a Debt Arrangement Scheme).

[Note: paragraph 3.9h of *DCG*]

- 7.3.17 **R** A *firm* must not take steps to repossess a *customer's* home, goods or vehicles other than as a last resort, having explored all other possible options.

[Note: paragraphs 7.14 of *ILG* and 3.7t of *DCG*]

- 7.3.17A **R** A *firm* must not commence or continue repossession action where a forbearance arrangement is in place for as long as the *customer* is meeting the terms of that arrangement.

- 7.3.18 **R** A *firm* must not threaten to commence court action, including an application for a charging order or (in Scotland) an inhibition or an order for sale, in order to pressurise a *customer* in or approaching arrears or in default to pay more than they can reasonably afford.

[Note: paragraphs 7.14 of *ILG* and 3.7i (box) of *DCG*]

- 7.3.19 **G** *Firms* seeking to recover debts under *regulated credit agreements* secured on *land* in England and Wales should have regard to the requirements of the relevant pre-action protocol (PAP) issued by the Civil Justice Council. The aims of the PAP are to ensure that a *firm* and a *customer* act fairly and reasonably with each other in resolving any matter concerning arrears, and to encourage more pre-action contact in an effort to seek agreement between the parties on alternatives to repossession. The Pre-action Protocol on Possession Proceedings applies to all mortgage repossession cases in

Northern Ireland. The Home Owner and Debtor Protection (Scotland) Act 2010 provides for pre-action requirements to be placed on secured *lenders* in Scotland.

[Note: paragraphs 7.14 of *ILG* and 3.7s of *DCG*]

7.3.20

G

- (1) Where a *customer* has informed the *firm* that they intend to access debt help or money guidance, the *firm* should allow the *customer* reasonable time to access it before considering whether to commence repossession action.
- (2) A *firm* may take action to repossess *goods* or *vehicles* as a last resort – for example, when the *firm* has made reasonable attempts to engage with the *customer* and the *customer* has not engaged.
- (3) When considering whether repossession is an appropriate course of action, a *firm* should have regard to all aspects of the financial impact on the *customer*, including asset depreciation if repossession is delayed.
- (4) A *firm* should inform the *customer* of the impact of the *firm* suspending any repossession actions, including on the value of *goods* or *vehicles*.
- (5) A *firm* taking or considering taking enforcement action should have regard to the *FCA's* Guidance for firms on the fair treatment of vulnerable customers (FG21/1) (<https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>).

7.3.21

G

Where it may be in the *customer's* interests to exercise their right to terminate a *hire purchase agreement* or *conditional sale agreement* under section 99 or section 100 of the *CCA*, a *firm* should make the *customer* aware of that right in good time, providing the information in a way that is clear, fair and not misleading to help the *customer* decide how to proceed.

7.3.22

G

Where a *customer* intends to exercise their rights under section 99 or section 100 of the *CCA*, a *firm* should consider deferring legal liabilities associated with voluntary termination.



7.4 Information on status of debts

7.4.1 **R** A *firm* must provide the *customer* or another *person* acting on behalf of the *customer* with information on the amount of any arrears and the balance owing.

[Note: paragraph 3.3f of DCG]

7.4.2 **R** Where:

- (1) a *customer* offers a settlement payment lower than the total amount owing; or
- (2) a *lender* under a *regulated credit agreement* or an *owner* under a *regulated consumer hire agreement* decides to stop pursuing a *customer* in respect of a debt arising under the agreement;

and the debt (or part of it) continues to exist notwithstanding the acceptance of the *customer's* offer or the decision to cease to pursue the debt, the *lender* or *owner* must ensure that the continuing existence of the debt and the possibility of the *customer* being pursued by another *firm* who purchases the debt is explained in clear terms to the *customer*.

[Note: paragraph 3.3i of DCG]

7.5 Pursuing and recovering repayments

- 7.5.1** **G** (1) Failure to comply with ■ CONC 6.5.2 R, which sets out when a *firm* must give notice to a *customer* where a *regulated credit agreement* has been assigned to a third party, will be taken into account by the *FCA* in taking decisions about a *firm's permission* or about taking other action.
- [Note: paragraph 3.7g of DCG]
- (2) ■ CONC 6.5.2 R makes it clear that where arrangements for servicing the *credit* change at the time of the assignment of a *regulated credit agreement*, notice must be given to the *customer* as soon as reasonably possible. A *firm* should give notice as required under that *rule* in order that any change should not adversely impact on a *customer's* existing repayment arrangements. In addition, if arrangements for servicing the debt otherwise change so far as the *customer* is concerned, the *firm* should notify the *customer* on or before that change.
- [Note: paragraph 3.7h of DCG]
- 7.5.2** **R** A *firm* must not pursue an *individual* whom the *firm* knows or believes might not be the *borrower* or *hirer* under a *credit agreement* or a *consumer hire agreement*.
- [Note: paragraph 3.5f of DCG]
- 7.5.3** **R** A *firm* must not ignore or disregard a *customer's* claim that a debt has been settled or is disputed and must not continue to make demands for payment without providing clear justification and/or evidence as to why the *customer's* claim is not valid.
- [Note: paragraph 3.7o of DCG]
- 7.5.4** **R** A *firm* acting on behalf of a *lender* or *owner* must, unless the *firm* has authority from the *lender* or *owner* to accept such an offer, refer a reasonable offer by the *customer* to pay by instalments to the *lender* or *owner*.
- [Note: paragraph 3.9f of DCG]

7.5.5 **R** A *firm* acting on behalf of a *lender* or *owner* must pass on payments received from a *customer* and/or details of a *customer's* outstanding balance to the *lender* or *owner* in a timely manner or, provided the effect of the agreement does not impact adversely on the *customer*, in accordance with an agreement between the *firm* and *lender* or *owner* in question

[Note: paragraph 3.9g of DCG]

7.5.6 **G** A timely manner in **■ CONC 7.5.5 R** would normally be within five *working days* of receipt of payment by the *firm*.

[Note: paragraph 3.9g of DCG]

7.6 Exercise of continuous payment authority

Recovery and continuous payment authorities etc.

7.6.1

R

- (1) A *firm* must not exercise its rights under a *continuous payment authority* (or purport to do so):
 - (a) unless it has been explained to the *customer* that the *continuous payment authority* would be used in the way in question; and
 - (b) other than in accordance with the terms specified in the *credit agreement* or the *P2P agreement*.
- (2) If a *firm* wishes a *customer* to change the terms of a *continuous payment authority* it must contact the *customer* and:
 - (a) provide the *customer* with an adequate explanation of the reason for and effect of the proposed change, including any effect it would have on the matters in ■ CONC 4.6.2R (2); and
 - (b) once it has done so, obtain the consent of the *customer*.

[Note: paragraph 3.9mi of DCG]

7.6.2

G

A *firm* should not:

- (1) request a *payment service provider* to make a payment from the *customer's* payment account unless:
 - (a) (i) the amount of the payment (or the basis on which payments may be taken) is specified in or permitted by the *credit agreement* or *P2P agreement*; and
 - (ii) the amount of the payment (or the basis on which payments may be taken) was referred to in the adequate explanation required by ■ CONC 4.6.2 R; or
- (b) the *firm* has complied in relation to such a request with ■ CONC 7.6.1R (2);
- (2) request a *payment service provider* to make a payment to recover default fees or other sums unless:
 - (a) (i) the amount (or the basis on which default fees or other sums may be taken) is specified in the *credit agreement* or *P2P agreement*; and

- (ii) the amount (or the basis on which default fees or other sums may be taken) was referred to in the adequate explanation required by ■ CONC 4.6.2 R; or
 - (b) the *firm* has complied in relation to such a request with ■ CONC 7.6.1R (2);
- (3) other than where ■ CONC 7.6.14R (2) applies, request a *payment service provider* to make a payment from the *customer's* payment account of an amount that is less than the amount due at the time of the request, unless the *firm*:
 - (a) (i) is permitted to do so by the *credit agreement* or *P2P agreement*; and
 - (ii) the adequate explanation required by ■ CONC 4.6.2 R indicated that part payment (a sum due which is less than the full sum due at the time the *firm's* payment request is made) could be requested if the full amount was not available and specified the basis on which and the frequency with which such requests for payment could be made and any minimum amount or percentage that would be requested; or
 - (b) the *firm* has complied in relation to such a request with ■ CONC 7.6.1R (2).
- (4) request a *payment service provider* to make a payment from the *customer's* payment account before the due date of payment as specified in the *credit agreement* or *P2P agreement*, unless the *firm* has complied with ■ CONC 7.6.1R (2);
- (5) request a *payment service provider* to make a payment from the *customer's* payment account after the due date on a date, or within a period, or with a frequency other than as specified in the *credit agreement* or *P2P agreement* and referred to in the adequate explanation, unless the *firm* has complied with ■ CONC 7.6.1R (2);
- (6) request a *payment service provider* to make a payment from the payment account of a third party other than as specifically agreed with the third party or agreed with the *customer* following the third party's confirmation to the *firm* that the third party consents to the arrangement.

[Note: paragraph 3.9mi of DCG]

7.6.2A

R

- (1) This *rule* applies where the terms of a *regulated credit agreement* or a *P2P agreement* do not provide for a *continuous payment authority* and it is proposed that a *customer* will grant a *continuous payment authority* to:
 - (a) a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*; or
 - (b) a *debt collector*, provided that the *debt collector* is acting under an arrangement with the *lender* or the *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, the effect of which is that a payment by the *customer* to the *debt collector* amounts to a discharge or reduction of the debt due to the *lender*.

- (2) The *firm* which proposes the *continuous payment authority* to the *customer* must, before the *customer* grants the *continuous payment authority*:
 - (a) explain why a *continuous payment authority* is proposed;
 - (b) provide the *customer* with an adequate explanation of the matters in ■ CONC 4.6.2R(2);
 - (c) give the *customer* information, on paper or in another *durable medium*, setting out, in plain and intelligible language, the terms of the *continuous payment authority* and how it will operate; and
 - (d) give the *customer* a reasonable opportunity to consider the explanations required by (a) and (b) and the information required by (c).
- (3) A *firm* must not propose that a *customer* should grant a *continuous payment authority*, and must not exercise rights under such an authority, in respect of *repayments* under a *regulated credit agreement* or a *P2P agreement*, the terms of which do not already provide for a *continuous payment authority*, unless:
 - (a) the *customer* is in or approaching arrears or in default in respect of the agreement; and
 - (b) a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, or a *debt collector* acting under an arrangement with the *lender* or the *person*, is exercising forbearance in respect of the *customer* in relation to the agreement.

7.6.2B

G

- (1) Where a *regulated credit agreement* or a *P2P agreement* does not incorporate the terms of a *continuous payment authority*, ■ CONC 7.6.2AR enables a *continuous payment authority* to be put in place (for example, for a repayment plan) without necessarily requiring an amendment to the agreement. But ■ CONC 7.6.2AR applies only where the *customer* is in or approaching arrears or in default, and the creation of the *continuous payment authority* supports the fair treatment of the *customer* and facilitates the exercise of forbearance (see ■ CONC 7.3.4R and ■ CONC 7.3.5G).
- (2) ■ CONC 7.6.2AR also permits a *continuous payment authority* to be granted to a *debt collector*, provided that the *debt collector* is acting under an arrangement with a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, such that a payment to the *debt collector* is treated as a payment to the *lender*, and the requirements of ■ CONC 7.6.2AR(3) are met.
- (3) ■ CONC 7.6.2AR is subject to the *rule* in ■ CONC 7.6.12R which restricts *firms* to two requests under a *continuous payment authority* for a sum due for *high-cost short-term credit*.
- (4) Whether a forbearance that involves the creation of a *continuous payment authority* amounts to an agreement that varies or supplements a *regulated credit agreement* (rather than merely an indulgence to the *customer*) will depend on the circumstances. If there is an agreement that varies or supplements a *regulated credit*

agreement, section 82(2) of the CCA requires it to be documented as a modifying agreement and ■ CONC 4.6.3R applies instead of ■ CONC 7.6.2AR. *Firms* should note the possibility that a *P2P agreement* may be a *regulated credit agreement*.

7.6.3 **R** A *firm* must exercise its rights under a *continuous payment authority* in a manner which is reasonable, proportionate and not excessive and must exercise appropriate forbearance if it becomes aware that the *customer* is or may be experiencing financial difficulties.

[Note: paragraph 3.9mii of DCG]

7.6.4 **G** Whether exercising rights under a *continuous payment authority* is reasonable, proportionate and not excessive (as regards the frequency or period of collection attempts), will depend on the circumstances, including:

- (1) whether the *firm* is aware or has reason to believe that the *customer* is in actual or potential financial difficulties which the exercise of rights under a *continuous payment authority* may exacerbate; and
- (2) whether the *customer* has been notified of the failure to collect the payment and has responded to contact from the *firm*.

[Note: paragraph 3.9mii of DCG]

7.6.5 **G** A *firm* is likely to contravene ■ CONC 7.6.3 R if it:

- (1) requests a *payment service provider* to make a payment from the *customer's* payment account before income or other funds may reasonably be expected to reach the account; for example, this is likely to be relevant where a *firm* is aware of the *customer's* salary payment date; or
- (2) requests a *payment service provider* to make a payment from the *customer's* payment account where it has reason to believe that there are insufficient funds in the account or that taking the payment would leave insufficient funds for *priority debts* or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills or utility bills); or
- (3) requests a *payment service provider* to make a part payment (a sum due which less than the full sum due at the time the *firm's* payment request is made) of the sum due from the *customer's* payment account before it has made reasonable attempts to collect the full payment of the sum due on the due date; or
- (4) continues to exercise its rights under the *continuous payment authority* for an unreasonable period after the payment due date without taking steps to establish the reason for the payment failure.

[Note: paragraph 3.9mii of DCG]

7.6.6 **G** Where permissible, a *firm* should only make a reasonable number of payment requests to a *payment service provider* to collect a part payment (a sum due which is less than the full sum due at the time the *firm's* payment request is made) from the *customer's* payment account, having regard to the possibility that the *customer* may be in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

7.6.7 **R** A *firm* must not exercise its rights under a *continuous payment authority*:

- (1) if the *customer* provides reasonable evidence to the *firm* of being in financial difficulties and the *customer* cannot afford to repay the debt; or
- (2) where the *firm* otherwise becomes aware of the *customer* being in financial difficulties and that the *customer* cannot afford to repay the debt.

[Note: paragraph 3.9mii (box) of DCG]

7.6.8 **G** (1) If a *firm* becomes aware that a *customer* is in financial difficulties, the *firm* should reassess the payment arrangement and should consider reasonable proposals to revise the payment schedule and alternative repayment arrangements.

[Note: paragraph 3.9mii (box) of DCG]

(2) Where a *customer* informs a *firm* of being in financial difficulties, pending receipt of evidence to that effect, a *firm* should consider suspending exercise of its rights under a *continuous payment authority*.

7.6.9 **G** In the *FCA's* view, a *firm's* inability to recover the whole of the amount due by the end of the next *working day* after the date on which it was due would indicate that the *customer* may be experiencing financial difficulties. In such a case, a *firm* should suspend exercising its rights under the *continuous payment authority* until it has made reasonable efforts to contact the *customer* to establish the reason why payment was unsuccessful and whether the *customer* is in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

7.6.10 **G** If the *firm* and the *customer* have agreed an alternative payment date as a contingency option if payment is not available on the due date, the *firm* should suspend the exercise of its rights under the *continuous payment authority* after the due date, and again after the alternative payment date (if the *firm* is unable to recover the amount due at the end of that day) and make reasonable efforts (in accordance with **CONC 7.6.9 G**) to contact the *customer* to establish the reason why payment was unsuccessful and whether the *customer* is in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

7.6.11 **G** If reasonable efforts to contact the *customer* are unsuccessful or a *customer* refuses to engage with the *firm* and there is no further evidence of financial difficulties, any subsequent exercise of its rights under the *continuous payment authority* should be reasonable and not excessive, having regard to the possibility that an unresponsive *customer* may nevertheless be in financial difficulties and that a *customer* who was not in financial difficulties at the time of contact may subsequently be in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

Continuous payment authorities and high-cost short-term credit

7.6.12 **R**

- (1) Subject to (3) to (5), a *firm* must not request a *payment service provider* to make a payment, under a *continuous payment authority*, to collect (in whole or in part) a sum due for *high-cost short-term credit* if it has done so in connection with the same agreement for *high-cost short-term credit* on two previous occasions and those previous payment requests have been refused.
- (2) For the purposes of (1) and (3):
 - (a) if *high-cost short-term credit* has been refinanced, except in exercise of forbearance, the agreement is to be regarded as the same agreement; and
 - (b) “refinance” and “exercise forbearance” have the same meaning as in ■ CONC 6.7.17 R.
- (3) Where a *firm* exercises forbearance:
 - (a) paragraph (1) applies or continues to apply to the agreement; but
 - (b) any refusal of a payment request that took place before the time at which the forbearance was granted is to be disregarded for the purposes of (1).
- (4) Paragraph (5) applies following the refusal of two payment requests a *firm* has made to a *payment service provider* under a *continuous payment authority* to collect a sum due for *high-cost short-term credit*, where the *firm* proposes to refinance the *high-cost short term credit* in question in accordance with ■ CONC 6.7.17 R to ■ CONC 6.7.23 R.
- (5) If the *firm* contacts the *customer* and, in the course of an dialogue between the *firm* and the *customer*:
 - (a) the *firm* notifies the *customer* of the refusal of the payment requests;
 - (b) the *firm* reminds the *customer* of the matters in ■ CONC 4.6.2R (2), taking account of any proposed changes to the terms of the *continuous payment authority* that will apply following the refinance if the *customer* consents; and
 - (c) the *customer* gives express consent to the *firm* further exercising its rights under the *continuous payment authority* following the refinance;

the *firm* may then make further payment requests under the *continuous payment authority* following the refinance in accordance with ■ CONC 7.6, and paragraph (1) applies as if the *firm* had not made a payment request under the *continuous payment authority* before the refinance.

- (6) This *rule* does not apply to an agreement which provides for repayment in instalments.

[**Note:** Until the end of 30 June 2014, transitional provisions apply to ■ CONC 7.6.12 R: see ■ CONC TP 3.4]

Continuous payment authorities and high-cost short-term credit: instalment payments

7.6.13

R

- (1) Where:

- (a) *high-cost short-term credit* provides for *repayment* in instalments; and
- (b) a *firm* has on two previous occasions made a payment request, under a *continuous payment authority*, to collect (in whole or in part) the same instalment due under the agreement, which have been refused;

subject to (3) and (4), the *firm* must not make a further payment request under the *continuous payment authority* to collect that instalment.

- (2) The *firm* must not make a further payment request under the *continuous payment authority* to collect any other instalment that is or becomes due under the agreement, unless any request is in accordance with ■ CONC 7.6 and in the course of a dialogue between the *firm* and the *customer*:

- (a) the *firm* notifies the *customer* of the refusal of the payment requests;
- (b) repayment of the instalment referred to in (1)(b) has been made using a method other than a *continuous payment authority* and the *customer* is not in arrears; and
- (c) where (a) and (b) apply, the *firm* has reminded the *customer* of the date and amount of the next instalment.

- (3) If, where the prohibition in (1) applies, a *firm* exercises forbearance within the meaning of ■ CONC 6.7.17 R the *firm* must not make a further payment request under the *continuous payment authority* to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:

- (a) a payment request is in accordance with ■ CONC 7.6;
- (b) the *firm* notifies the *customer* of the refusal of the payment requests; and
- (c) in the course of a dialogue between the *firm* and the *customer*, the *firm* reminds the *customer* of the date and amount of the next instalment and following which the *customer* gives express consent to further payment requests being made under the *continuous payment authority*.

- (4) If, where the prohibition in (1) applies, a *firm* adds no charge or additional interest in connection with missing a payment on the due date, the *firm* must not make a further payment request under the *continuous payment authority* to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:
- (a) a payment request is in accordance with ■ CONC 7.6;
 - (b) the *customer* has missed making a payment on the due date; and
 - (c) in the course of a dialogue between the *firm* and the *customer*, the *firm* reminds the *customer* of the date and amount of the next instalment and following which the *customer* gives express consent to further payment requests being made under the *continuous payment authority*.

[Note: Until the end of 30 June 2014, transitional provisions apply to ■ CONC 7.6.13 R: see ■ CONC TP 3.5]

7.6.14

R

- (1) Subject to (2), a *firm* must not request a *payment service provider* to make a payment under a *continuous payment authority* to collect a sum due for *high-cost short-term credit* if that sum is less than the full sum due at the time the request is made.

- (2) Where a *firm*:

- (a) following contact with a *customer*, refinances the agreement in accordance with ■ CONC 6.7.17 R to ■ CONC 6.7.23 R by granting an indulgence which allows for one or more *repayment* of a reduced amount under a repayment plan;
- (b) notifies the *customer* of the number and frequency of *repayments* and their amount under the repayment plan; and
- (c) the *customer* gives express consent to the *firm* to make payment requests to collect the *repayments* notified under the plan;

[Note: Until the end of 30 June 2014, transitional provisions apply to ■ CONC 7.6.14 R: see ■ CONC TP 3.6]

paragraph (1) does not prevent the *firm* from making a payment request in accordance with ■ CONC 7.6 under a *continuous payment authority* to collect *repayments* of those amounts in accordance with the plan.

7.6.15

G

- (1) ■ CONC 7.6.12 R, ■ CONC 7.6.13 R and ■ CONC 7.6.14 R do not prevent a *firm* accepting payment (including a part payment) from a *customer* using a means of payment other than under a *continuous payment authority*. If, for example, a *customer* consents separately that a single payment of a specified amount may be taken on the same day or on another specified day using his or her debit card details, this is excluded from the definition of *continuous payment authority*.
- (2) ■ CONC 7.6.14 R does not prevent a *firm* from making a payment request concerning a sum due where the *firm* has varied an agreement so that the sum due is less than it was before the variation.

(3) *Firms* are reminded of their record-keeping obligations under ■ SYSC 9.1.1 R and ■ SYSC 9.1.1AR (general rules on record-keeping) which in particular require sufficient records to be kept to ascertain that the *firm* has complied with all obligations with respect to *customers*. These should include, for example, arranging to keep records of payment requests (including refusals of payment requests) made under *continuous payment authorities* and to keep suitable written or other records of the consents referred to in ■ CONC 7.6.1 R, ■ CONC 7.6.12 R, ■ CONC 7.6.13 R and ■ CONC 7.6.14 R.

7.6.15A G

- (1) Paragraph (2) applies where a guarantor has provided a guarantee or an indemnity (or both) in respect of *high-cost short-term credit*. (See ■ CONC 7.1.4R for the meanings of “guarantor” and “guarantee”.)
- (2) ■ CONC 7.6.12R and ■ CONC 7.6.13R apply to a *continuous payment authority* granted by the *borrower* and to a *continuous payment authority* granted by a guarantor separately. This means that the *firm* may make up to two requests for payment under a *continuous payment authority* granted by the *borrower* and, if those requests are unsuccessful, up to two requests for payment under a *continuous payment authority* granted by the guarantor.

Cancelling a continuous payment authority

7.6.16 R

A *firm* must not by any means improperly or unfairly inhibit or discourage a *customer* from cancelling a *continuous payment authority* including by:

- (1) misleading the *customer*, expressly or by omission, regarding the right to cancel and how it may be exercised; or
- (2) failing to respond promptly to requests by or on behalf of the *customer* to amend or cancel the *continuous payment authority*; or
- (3) intimidating a *customer* who wishes to cancel the *continuous payment authority*; or
- (4) requiring *customers* who wish to cancel the *continuous payment authority* to go through an unduly complicated process.

[Note: paragraph 3.9miv of DCG]

7.6.17 R

A *firm* must cease to exercise its rights under the *continuous payment authority* once it is notified that the *continuous payment authority* has been cancelled.

[Note: paragraph 3.9miv of DCG]



7.7 Application of interest and charges

- 7.7.1** **G** When levying charges for debt recovery on *customers* in default or arrears difficulties *firms* should consider their obligation under *Principle 6* to pay due regard to the interests of *customers* and treat them fairly.
- [Note: paragraphs 3.1 and 3.10 of *DCG*]
- 7.7.2** **R** A *firm* must not claim the costs of recovering a debt from a *customer* if it has no contractual right to claim such costs.
- [Note: paragraph 3.11b of *DCG*]
- 7.7.3** **R** A *firm* must not cause a *customer* to believe that the *customer* is legally liable to pay the costs of recovery where no such obligation exists.
- [Note: paragraph 3.11a of *DCG*]
- 7.7.4** **G** Where a *firm* has a contractual right to levy default charges, a *regulated credit agreement* must state the charges and the conditions for making the charge under, as the case may be, the Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014) or the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553).
- [Note: paragraphs 3.11c of *DCG* and 7.15 of *ILG*]
- 7.7.5** **R** A *firm* must not impose charges on *customers* in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the *firm*.
- [Note: paragraphs 3.11 of *DCG* and 7.15 of *ILG*]
- 7.7.6** **G** When considering whether any costs may be reasonable, a *firm* may have regard to the frequency and nature of the events to which the costs relate and whether they arise directly from the *customer* being in default or arrears difficulties.



7.8 Jurisdictional requirements

7.8.1 **R** A *firm* dealing with a *customer* who is resident in a different jurisdiction to the jurisdiction of the *firm's* place of business must ensure that it takes appropriate account of any differences in law and court procedure that may have a significant impact on the *customer's* rights.

[Note: paragraph 2.3 of DCG]

7.8.2 **G** ■ CONC 7.8.1 R will apply, for example, where a *firm's* place of business is in England and the *customer* resides in Scotland.

[Note: paragraph 2.3 of DCG]

7.8.3 **R** A *firm* must not commence proceedings or threaten to commence proceedings in the wrong jurisdiction.

[Note: paragraph 3.5g of DCG]



7.9 Contact with customers

Contacting customers

- 7.9.1 **R** A firm must ensure that a *person* contacting a *customer* on its behalf explains to the *customer* the following matters:
 - (1) who the *person* contacting the *customer* works for;
 - (2) the *person's* role in or relationship with the *firm*; and
 - (3) the purpose of the contact.

[Note: paragraph 3.3c of DCG]
- 7.9.2 **R** A firm must not in a communication with the *customer* make a statement which may induce the *customer* to contact the *firm* misunderstanding the reason for making contact.

[Note: paragraph 3.3d of DCG]
- 7.9.3 **G**
 - (1) An example of a misleading communication in **CONC 7.9.2 R** is a calling card left at the *customer's* address which states or implies that the *customer* has missed a delivery and encourages the *customer* to make contact.

[Note: paragraph 3.3d (box) of DCG]
 - (2) The clear fair and not misleading rule in **CONC 3.3.1 R** also applies to a *firm* in relation to a communication with a *customer* in relation to credit agreement or a consumer hire agreement.
- 7.9.4 **R** A firm must not contact *customers* at unreasonable times and must pay due regard to the reasonable requests of *customers* (for example, *customers* who work in a shift pattern) in respect of when, where and how they may be contacted.

[Note: paragraphs 3.3j and k of DCG]
- 7.9.5 **R** A firm must not require a *customer* to make contact on a premium rate or other special rate telephone number the charge for which is higher than to a standard geographic telephone number.

[Note: paragraph 3.3l of DCG]

- 7.9.5A **G** *Firms* should note the effect of the *call charges rule* in ■ GEN 7.
- Communication with third parties**.....
- 7.9.6 **R** A *firm* must not unfairly disclose or threaten to disclose information relating to the *customer's* debt to a third party.
- [Note: paragraph 3.7p of DCG]
- 7.9.7 **R** When contacting a *customer*:
- (1) a *firm* must ensure that it does not act in a way likely to be publicly embarrassing to the *customer*; and
 - (2) a *firm* must take reasonable steps to ensure that third parties do not become aware that the *customer* is being pursued in respect of a debt
- [Note: paragraph 3.7q of DCG].
- 7.9.8 **G** The reasonable steps required by ■ CONC 7.9.7 R may, for example, require a *firm* to ensure that:
- (1) post sent by the *firm* is properly addressed to the *customer* and marked "private and confidential" or an expression to the same effect;
 - (2) where the *firm* has a name which indicates its debt collection activities, its name is not shown so that third parties may see the name on the *firm's* communications.
- 7.9.9 **G** ■ CONC 7.9.7 R would not preclude a *firm* sending a statutory notice to a *customer's* last known address, where it takes reasonable steps including those referred to in ■ CONC 7.9.8 G.
- 7.9.10 **R** A *firm* must not disclose details of a debt to an *individual* without first establishing, by suitably appropriate means, that the *individual* is (or acts on behalf of) the *borrower* or *hirer* under the relevant agreement).
- [Note: paragraph 3.9b of DCG]
- 7.9.11 **G** A *firm* which:
- (1) threatens debt recovery action against the "occupier" of particular premises; or
 - (2) sends a payment demand to all persons sharing the same name and date of birth or address as the *customer*;
- is likely to contravene ■ CONC 7.9.10 R.
- [Note: paragraphs 3.9a (box) and 3.9b (box) of DCG]

Debt collection visits

7.9.12 **R** Unless it is not practicable to do so, a *firm* must ensure that a *person* visiting a *customer* on its behalf:

- (1) clearly explains to the *customer* the purpose and intended outcome of the proposed visit; and

[Note: paragraph 3.12 of DCG]

- (2) gives the *customer* adequate notice of the date and likely time (at a reasonable time of day) of the visit.

[Note: paragraph 3.13g of DCG]

7.9.13 **G** Failure to explain the purpose and intended outcome of a proposed initial visit to the *customer* or to give adequate notice prior to a proposed initial visit to the *customer* may not contravene **CONC 7.9.12 R**, provided that the *customer* is happy to speak to the *person* pursuing recovery of the debt at that time. However, where, at the initial visit the *customer* indicates a preference to use the first visit to agree a more convenient time for a future visit, the *person* pursuing recovery of the debt should respect the *customer's* wishes. It is important that the *customer* is given reasonable time to prepare for a visit and should not be coerced or pressurised into immediate discussions or decisions.

[Note: paragraph 3.13g (box) of DCG]

7.9.14 **R** A *firm* must ensure that all *persons* visiting a *customer's* property on its behalf act at all times in accordance with the requirements of **CONC 7** and do not:

- (1) act in a threatening manner towards a *customer*;
- (2) visit a *customer* at a time when they know or suspect that the *customer* is, or may be, particularly vulnerable;
- (3) visit at an inappropriate location unless the *customer* has expressly consented to the visit;
- (4) enter a *customer's* property without the *customer's* consent or an appropriate court order;
- (5) refuse to leave a *customer's* property when it becomes apparent that the *customer* is unduly distressed or might not have the mental capacity to make an informed repayment decision or to engage in the debt recovery process;
- (6) refuse to leave a *customer's* property when reasonably asked to do so;
- (7) visit or threaten to visit a *customer* without the *customer's* prior agreement when a debt is deadlocked or reasonably queried or

disputed (see ■ CONC 7.14 (Settlements, disputed and deadlocked debt)).

[Note: paragraphs 3.12 and 3.13 of DCG]

7.9.15

G

It would normally be inappropriate to visit a *customer* at the *customer* place of work or at a hospital where the *customer* is a patient.



7.10 Treatment of customers with mental capacity limitations

- 7.10.1** **R** A *firm* must suspend the pursuit of recovery of a debt from a *customer* when:
- (1) the *firm* has been notified that the *customer* might not have the mental capacity to make relevant financial decisions about the management of the *customer's* debt and/or to engage in the debt recovery process at the time; or
 - (2) the *firm* understands or ought reasonably to be aware that the *customer* lacks mental capacity to make relevant financial decisions about the management of the *customer's* debt and/or to engage in the debt recovery process at the time.

[Note: paragraphs 3.7r of DCG and 7.13 of ILG]

- 7.10.2** **G** A *firm* should allow a *customer* or a *person* acting on behalf of the *customer* a reasonable period of time to provide evidence as to the likely impact of any mental capacity limitation on the *customer's* ability to engage with the *firm*.

[Note: paragraph 3.7r (box) of DCG]

- 7.10.3** **G** ■ CONC 7.10.1 R does not prevent a *firm* from pursuing the debt through a responsible third party acting on behalf of the *customer*, where the *customer* has given prior consent, for example, pursuant to a registered lasting power of attorney.

[Note: paragraph 3.7r (box) of DCG]

- 7.10.4** **G** *Firms* should note ■ CONC 7.2.1 R (and its accompanying *guidance*) which requires *firms* to establish and implement policies and procedures for the fair and appropriate treatment of vulnerable *customers*.



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]

7.12 Lenders' responsibilities in relation to debt

Application

- 7.12.1 **R** This section applies to a *firm* with respect to *consumer credit lending* or in respect to activity that would be *consumer credit lending* but for article 60C(4A) of the *Regulated Activities Order*.

Unfair business practices

- 7.12.2 **R** A *firm* must not:
- (1) refuse to deal with a *not-for-profit debt advice body*, *debt counsellor*, *debt adjuster* or with another *person* acting on behalf of a *customer*, unless there is an objectively justifiable reason for doing so;

[Note: paragraphs 3.9c of DCG and 3.48 of DMG]
 - (2) unless the *credit agreement* requires payments to be made to a third party, refuse to accept a payment tendered to the *firm* by the *customer* or by a *person* acting on behalf of the *customer*;

[Note: paragraphs 3.8 of DCG and 3.49a of DMG]
 - (3) refuse to deal with a *customer* who is developing a repayment plan, a third party who is assisting a *customer* to develop a repayment plan or a third party who is developing a *debt management plan* for the *customer's* debts, unless there is an objectively justifiable reason for doing so;

[Note: paragraphs 3.9c of DCG and 3.49b of DMG]
 - (4) where a *person* is acting on behalf of a *customer*, directly contact the *customer* without the *customer's* consent, unless there is an objectively justifiable reason for doing so;

[Note: paragraph 3.9d of DCG]
 - (5) operate a policy:
 - (a) of only negotiating the freezing of interest and charges on a *customer's* debts where the *lender* has an existing arrangement with a *person* acting on behalf of the *customer*; or
[Note: paragraph 3.49e of DMG]

7.12.3

G

(b) of refusing to negotiate with certain third parties or with a *customer* developing their own repayment plan; or

[Note: paragraph 3.49c (box) of *DMG*]

(6) return or refuse a *repayment* or refuse to credit a *repayment* to a *customer's* account merely because the *repayment* is tendered by a *debt management firm*.

[Note: paragraph 3.49a of *DCG*]

(1) ■ CONC 1.2.2 R requires a *firm* to ensure its employees and agents comply with *CONC* and that it takes reasonable steps to ensure other *persons* who act on its behalf do so. This *rule* would apply where a *debt collector* acts as agent or on behalf of a *lender*.

(2) Situations where it may be justified for a *firm* to refuse to deal with a *person* acting on behalf of a *customer* may include, for example, refusing to deal with that *person* where the *firm* is able to show that the *person* has failed to comply with consumer protection legislation or with *FCA rules*.

[Note: paragraph 3.48 of *DMG*]

(3) It may be justified for a *firm* to contact a *customer* directly where:

(a) repeated unsuccessful efforts have been made to contact a *person* acting on behalf of the *customer*; or

[Note: paragraphs 3.9d of *DCG* and 3.49c (box) of *DMG*]

(b) the *firm* reasonably believes the *person* acting on behalf of the *customer* is acting against the best interests of the *customer*.

(4) Situations where it would be justified for a *firm* to contact a *customer* directly include, for example:

(a) sending a statutory notice, taking the reasonable steps required by ■ CONC 7.9.7 R; or

(b) where the sole purpose of the contact is to signpost the *customer* to *not-for-profit debt advice bodies*.

(5) Where a *firm* is in dispute with a *person* acting on behalf of the *customer* it should make its position known to that *person* and to the *customer* as soon as practicable.

[Note: paragraph 3.49d of *DMG*]

(6) The *FCA* does not believe it is justified to bypass contacting a *person* acting on behalf of a *customer* merely because that *person* has not agreed to comply with the Insolvency Service's Debt Management Protocol.



7.13 Data accuracy and outsourced activities

Data accuracy

7.13.1 **G** The obtaining, recording, holding and passing on of information about individuals for the purposes of tracing a *customer* and/or recovering a debt due under a *credit agreement* or a *consumer hire agreement* or a *P2P agreement* will involve the processing of personal data. Accordingly, *firms* processing such data are data controllers or data processors and are obliged to comply with *data protection legislation* and, in particular, to adhere to the data protection principles.

[Note: paragraph 3.16 of DCG]

7.13.2 **R** A *firm* must take reasonable steps to ensure that it maintains accurate and adequate data (including in respect of debt and repayment history) so as to avoid the risk that:

- (1) an *individual* who is not the true *borrower* or *hirer* is pursued for the repayment of a debt; and
- (2) the *borrower* or *hirer* is pursued for an incorrect amount.

[Note: paragraphs 3.19 of DCG and 7.11 (box) of ILG]

7.13.3 **R** A *firm* must endeavour to ensure that the information it passes on to its agent or to a *debt collector* or to a tracing agent (a *person* that carries on the activity in article 54 of the Exemption Order), whether for the *firm's* or another *person's* business, or to any other *person* involved in recovering the debt or, where appropriate, to a *credit reference agency* is accurate and adequate so as to facilitate the tracing and identification of the true *borrower* or *hirer*.

[Note: paragraphs 3.20 of DCG and 7.11 (box) ILG]

7.13.4 **R** Before pursuing a *customer* for the repayment of a debt, a *firm* must take reasonable steps to verify the accuracy and adequacy of the available data so as to ensure that the true *customer* is pursued for the debt and that they are pursued for the correct amount.

[Note: paragraphs 3.7e and 3.23a of DCG]

7.13.5 **G** A *firm* should ensure (subject to any legal requirements) that adequate and accurate information it holds about a *customer* in relation to a debt is made available to *persons* involved on its behalf in the debt recovery process. Information relating to the *customer* which should be made available to agents or employees includes, for example:

- (1) being in financial difficulties;
- (2) being particularly vulnerable;
- (3) disputing the debt;
- (4) a repayment plan or forbearance being in place;
- (5) having a representative acting on the *customer's* behalf.

[Note: paragraph 3.23b (box) of DCG]

7.13.6 **G** A *firm* should not impose limitations on the number or the extent of reasonable applications that can be made to it for documents or other relevant information pertaining to a *customer* in respect of which it is, or has been, the *lender* or *owner*, by a *firm* seeking such information to facilitate its pursuance of the relevant debt.

[Note: paragraph 3.23i of DCG]

7.13.7 **R** Where a *firm* has established that an *individual* being pursued for a debt is not the true *borrower* or *hirer* under the *credit agreement*, *regulated credit agreement*, *consumer hire agreement* or *regulated consumer hire agreement* or that the debt has been paid, the *firm* must update its records and the data supplied to the *credit reference agencies* (where applicable).

[Note: paragraph 3.23f of DCG]

Outsourcing.....

7.13.8 **G** ■ SYSC 8.1 includes *rules* and *guidance* on outsourcing with which *firms* must or should comply as appropriate.

7.13.9 **G** A *firm* seeking to instruct a third party to pursue the recovery of debts or to trace *customers* on its behalf should exercise due care in selecting the third party.

[Note: paragraph 2.5 of DCG]

7.13.10 **G** A *firm* should take reasonable steps to seek to ensure that, where it has engaged a third party to recover debts on its behalf, the *customer* is not subject to multiple approaches by different *persons*, resulting in repetitive or frequent contact with the *customer* by different parties.

[Note: paragraph 3.7c of DCG]

- 7.13.11 **G** Where a *firm* has engaged a third party to recover debts or to trace *customers* on its behalf, it should properly investigate complaints about the third party.
- [Note: paragraph 2.5 of DCG]
- 7.13.12 **G** ■ CONC 1.2.2 R requires a *firm* to ensure its employees and agents comply with CONC and that it takes reasonable steps to ensure other *persons* who act on its behalf do so.
- 7.13.13 **R** A *firm* must ensure that a third party engaged by it, where required, has the appropriate *Part 4A permission* to engage in the *regulated activities* undertaken in the course of the third party's business.
- [Note: paragraph 2.6 of DCG]



7.14 Settlements, disputed and deadlocked debt

Disputed debt

7.14.1

R

(1) A *firm* must suspend any steps it takes or its agent takes in the recovery of a debt from a *customer* where the *customer* disputes the debt on valid grounds or what may be valid grounds.

[Note: paragraph 3.9k of DCG]

(2) Paragraph (1) does not apply where a *customer* under a green deal consumer credit agreement (within the meaning of section 189B of the CCA) alleges that the disclosure and acknowledgement provisions in Part 7 of the Green Deal Framework (Disclosure, Acknowledgement, Redress etc) Regulations 2012 (SI 2012/2079) have been breached, but the *lender* reasonably believes this not to be the case.

7.14.2

G

Valid grounds for disputing a debt include that:

- (1) the *individual* being pursued for the debt is not the true *borrower* or *hirer* under the agreement in question; or
- (2) the debt does not exist; or
- (3) the amount of the debt being pursued is incorrect.

[Note: annex A3 of DCG]

7.14.3

R

Where a *customer* disputes a debt on valid grounds or what may be valid grounds, the *firm* must investigate the dispute and provide details of the debt to the *customer* in a timely manner.

[Note: paragraph 3.9i of DCG]

7.14.4

R

Where there is a dispute as to the identity of the *borrower* or *hirer* or as to the amount of the debt, it is for the *firm* (and not the *customer*) to establish, as the case may be, that the *customer* is the correct *person* in relation to the debt or that the amount is the correct amount owed under the agreement.

[Note: paragraphs 3.9j of DCG and 7.11 (box) of ILG]

7.14.5 **R** A *firm* must provide a *customer* with information on the outcome of its investigations into a debt which the *customer* disputed on valid grounds.

[Note: paragraph 3.3g of DCG]

7.14.6 **R** Where a *customer* disputes a debt and the *firm* seeking to recover the debt is not the *lender* or the *owner*, the *firm* must:

(1) pass the information provided by the *customer* to the *lender* or the *owner*; or

[Note: paragraph 3.23h of DCG]

(2) if the *firm* has authority from the *lender* or *owner* to investigate a dispute, it must notify the *lender* or *owner* of the outcome of the investigation.

Settlements and deadlocked debt etc

7.14.7 **G** A debt repayment is deadlocked where the *customer* (or the *customer's* representative) has acknowledged the *customer's* liability for a debt and has proposed a repayment plan, but the proposed repayment plan is not acceptable to the *firm* seeking to recover the debt.

[Note: annex A4 of DCG]

7.14.8 **R** A *firm* must give due consideration to a reasonable offer of repayment made by the *customer* or the *customer's* representative.

[Note: annex A5 of DCG]

7.14.9 **R** Where a *firm* rejects a proposal for repayment from a *customer* in default or in arrears difficulties or from the *customer's* representative, the *firm's* response must include a clear explanation of the reason for the rejection.

[Note: paragraph 7.16 (box) of ILG]

7.14.10 **R** If a *firm* rejects a repayment offer because it is unacceptable, the *firm* must not engage in any conduct intended to, or likely to, have the effect of intimidating the *customer* into increasing the offer.

[Note: annex A5 of DCG]

7.14.11 **G** Examples of conduct that may contravene **CONC 7.14.10 R** would, depending on the circumstances, include where following an unacceptable offer a *firm* immediately:

(1) sends field agents to visit the *customer* or communicates to the *customer* that it will do so;

[Note: annex A5 (box) to DCG]

(2) substantially increases the rate of interest or imposes a substantial charge or communicates that it will do either of those things.

7.14.12 **G** In considering the *customer's* repayment offer, a *firm* should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

[Note: annex A6 of DCG]

7.14.13 **G** (1) Merely making a counter-offer to a *customer's* repayment offer or merely taking steps to enforce an agreement would not contravene ■ CONC 7.14.10 R.

(2) A *firm* which makes a counter offer to a proposal made by or on behalf of the *customer*, should allow the *customer* or the *customer's* representative, a reasonable period of time to consider and respond to the counter offer.

[Note: paragraph 7.16 of ILG]

7.14.14 **R** If a *firm* accepts a *customer's* offer to settle a debt, it must communicate formally and unequivocally that the offer accompanied by the relevant payment has been accepted as settlement of the *customer's* liability.

[Note: paragraph 3.3h of DCG]

7.15 Statute barred debts

7.15.1 **G** A debt is statute barred where the prescribed period within which a claim in relation to the debt may be brought expires. In England, Wales and Northern Ireland, the limitation period is generally six years in relation to debt. In Scotland, the prescriptive period is five years in relation to debt.

[Note: annex B1 of DCG]

7.15.2 **G** In England, Wales and Northern Ireland, a statute barred debt still exists and is recoverable.

[Note: paragraph 3.15a and annex B3 of DCG]

7.15.3 **G** In Scotland, a statute barred debt ceases to exist and is no longer recoverable if:

- (1) a relevant claim on behalf of the *lender* or *owner* has not been made during the relevant limitation period; and
- (2) the debt has not been acknowledged by, or on behalf of, the *customer* during the relevant limitation period.

[Note: annex B3 of DCG]

7.15.4 **R** Notwithstanding that a debt may be recoverable, a *firm* must not attempt to recover a statute barred debt in England, Wales or Northern Ireland if the *lender* or *owner* has not been in contact with the *customer* during the limitation period.

[Note: paragraph 3.15b of DCG]

7.15.5 **G** If the *lender* or *owner* has been in regular contact with the *customer* during the limitation period, the *firm* may continue to attempt to recover the debt.

[Note: paragraph 3.15b of DCG]

7.15.6 **R** A *firm* must endeavour to ensure that it does not mislead a *customer* as to the *customer's* rights and obligations.

[Note: paragraph 3.15b of DCG]

7.15.7 **G** It is misleading for a *firm* to suggest or state that a *customer* may be the subject of court action for the sum of the statute barred debt when the *firm* knows, or reasonably ought to know, that the relevant limitation period has expired.

[Note: paragraph 3.15b of DCG]

7.15.8 **R** A *firm* must not continue to demand payment from a *customer* after the *customer* has stated that he will not be paying the debt because it is statute barred.

[Note: paragraph 3.15b of DCG]

7.15.9 **R** A *firm* must identify for prospective purchasers of debts arising under *credit agreements* or *consumer hire agreements* or *P2P agreements* those debts which it knows or ought reasonably to know are statute barred, so as to avoid a *firm* taking inappropriate action against *customers* in relation to such debts.

[Note: paragraph 3.23c of DCG]

Complaints to the Financial Ombudsman Service and initiating legal proceedings

7.15.10 **R** A *lender* must not initiate legal proceedings in relation to a *regulated credit agreement* where the *lender* is aware that the *customer* has submitted a valid complaint or what appears to the *firm* may be a valid complaint relating to the agreement in question that is being considered by the *Financial Ombudsman Service*.

[Note: paragraph 7.9 (box) of ILG]



7.16 Passing data to lead generators etc.

7.16.1 **R** *A firm must not pass on a customer's details to third parties, including lead generators, debt management firms, lenders, owners, debt collectors or credit brokers, unless it is appropriate to do so.*

[Note: paragraph 3.9e of DCG]

7.16.2 **G** [deleted]



7.17 Notice of sums in arrears under P2P agreements for fixed-sum credit

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 7.17: see ■ CONC TP 4.3]

Application

7.17.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement* for *fixed-sum credit*.

- 7.17.2 **R**
- (1) Subject to (2), this section does not apply where the *P2P agreement* provides for *credit* of less than £50.
 - (2) Paragraph (1) does not apply where two or more *P2P agreements* in relation to the same *borrower* (whether or not with the same *lender*) are entered into at or about the same time.
 - (3) Where (2) applies, the *firm's* obligations in ■ CONC 7.17 apply as if all of the *P2P agreements* made with a *borrower* at or about the same time were a single agreement.

Notice of sums in arrears for fixed-sum credit

- 7.17.3 **R** A *firm* must comply with this section where the following conditions are satisfied:
- (1) a *borrower* is required to have made at least two payments under the agreement before that time;
 - (2) the total sum paid under the agreement by the *borrower* is less than the total sum required to have been paid before that time;
 - (3) the amount of the shortfall is no less than the sum of the last two payments which the *borrower* is required to have made before that time;
 - (4) the *firm* is not already under a duty to give the *borrower* notices under ■ CONC 7.17.4 R in relation to the agreement;
 - (5) the *lender* is not already under a duty to give the *borrower* notice under section 86B of the CCA; and

7.17.4

R

(6) if a judgment has been given in relation to the agreement before that time, there is no sum still to be paid under the judgment by the *borrower*.

(1) The *firm* must, within the period of 14 days beginning with the day on which the conditions in ■ CONC 7.17.3 R are satisfied, give the *borrower* a notice including the information set out in ■ CONC 7.17.7 R and ■ CONC 7.17.8 R.

(2) After giving that notice, the *firm* must give the *borrower* further notices including the information in ■ CONC 7.17.7 R and ■ CONC 7.17.8 R at intervals of not more than six *months*.

7.17.5

R

(1) The duty of the *firm* to give the *borrower* notices under ■ CONC 7.17.4 R will cease when either of the conditions mentioned in (2) is satisfied but, if either of those conditions is satisfied before the notice required by ■ CONC 7.17.4R (1) is given, the duty will not cease until that notice is given.

(2) The conditions referred to in (1) are:

- (a) that the *borrower* ceases to be in arrears;
- (b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the *borrower*.

(3) For the purposes of (2)(a) the *borrower* ceases to be in arrears when:

- (a) no payments, which the *borrower* has ever failed to make under the agreement when required, are still owing;
- (b) no default sum, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing;
- (c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and
- (d) no other sum of interest, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing.

(4) A *firm* must accompany the notice required by ■ CONC 7.17.4 R with a copy of the current arrears information sheet under section 86A of the CCA with the following modifications:

(-a) [deleted]

(a) for the numbered point headed "Work out how much money you owe" substitute:

"Work out how much money you owe. To do this, you will need to make a list of all those you owe money to. A debt adviser can help you.";

(b) for the numbered point headed "Contact the organisations you owe money to" substitute:

“Contact the peer-to-peer (P2P) platform which arranged your loan. Let them know you are having problems. They may be able to discuss options for paying back what you owe.”;

(ba) For the bullet point headed “If you live in England and Wales, you may be entitled to ‘breathing space’” substitute:

“You may be entitled to ‘breathing space’ – a defined period where you have protections from legal action taken against you. Speak to a debt adviser who can set out your options.”;

(c) For the paragraph headed “Doing nothing could make things worse.” substitute:

“Doing nothing could make things worse.

You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase.”.

(5) The *firm* must not charge the *borrower* a fee in connection with preparation of or the giving of the notice required by ■ CONC 7.18.4 R.

7.17.6 **R** In this section “payments” means payments to be made at predetermined intervals provided for under the terms of the agreement.

Content of arrears notices: fixed-sum credit

7.17.7 **R** The notice required by ■ CONC 7.17.4 R must contain the following information:

- (1) a form of wording to the effect that the notice is given in compliance with the *rules* because the *borrower* is behind with the sums payable under the agreement;
- (2) a form of wording encouraging the *borrower* to discuss the state of his account with the *firm*;
- (3) the date of the notice;
- (4) (a) the name, telephone number or numbers, the postal address, and, where appropriate, any other address of the *firm*; or
 (b) where the *firm* and the *borrower* have entered into an arrangement under which the *borrower* has been given details of a particular employee or category of employee of the *firm* whom the *borrower* is entitled to contact for all the *borrower's* dealings with the *firm*, the *firm* may, instead of including the telephone number or numbers in (a), refer to that arrangement;
- (5) a description sufficient to identify any agreements and the opening balance under any agreements at the date on which the duty to give the notice arose;

- (6) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:

"Default sums and interest

You may have to pay default sums and interest in relation to the missed or partly made payments referred to in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice."; or

- (b) in any other case, a statement in the following form:

"Default sums and interest

You will not incur any default sums or extra interest in relation to the missed or partly made payments referred to in this notice. This notice does not take account of any payments received after the date of the notice.";

- (7) a statement in the following form:

"Notices

For so long as you continue to be behind with your payments by any amount, you will be sent notices about this at least every six months. We are not required to send you notices more frequently than this, even if you get further behind with your payments in between notices."; and

- (8) a statement in the following form:

"Financial Conduct Authority Information Sheet

This notice should include a copy of the current arrears information sheet prepared by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example to think carefully before borrowing money to repay debts as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Financial Conduct Authority information sheet for more information about how to get advice on dealing with your debt.".

Content of first required arrears notices

7.17.8

R

Where the notice is given under **CONC 7.17.4R (1)** the notice must also state the amount of the shortfall under the agreement which gave rise to the duty to give the notice and the *firm* must:

- (1) within 15 *working days* of receiving the *borrower's* request for further information about the shortfall which gave rise to the duty to give the notice, give the *borrower* in relation to each of the sums which comprise the shortfall, notice of:
- (a) the amount of the sums due which comprise the shortfall;
 - (b) the date on which the sums became due; and
 - (c) the amounts the *borrower* has paid in respect of the sums due and the dates of those payments;

- (2) except where the original notice contained all the information specified in (1), include a statement in the following form
"If you want more information about which payments you failed to make please get in touch with us. We are required to give you this information within fifteen working days of receiving your request for it."; and
- (3) where the *firm* and the *borrower* have entered into an agreement to aggregate, the references to sums due and to amounts paid in (1) may be construed as a reference to the aggregated sums due to the *firm* (on behalf of the *lender*) and the aggregated amounts paid by the *borrower* in accordance with the terms of that agreement.

Content of required arrears notices except first required notices

7.17.9 **R** Where the notice is given under ■ CONC 7.17.4R (2) the notice must also contain the following information:

- (1) that part of the opening balance referred to in ■ CONC 7.17.7R (5) which comprises any sum which the *borrower* has failed to pay in full when it became due under the agreement, whether or not such sums have been included in a previous notice;
- (2) the amount and date of any sums paid into the account by, or to the credit of, the *borrower* during the period to which the notice relates;
- (3) the amount and date of any interest or other charges payable by the *borrower* which became due during the period to which the notice relates, whether or not the interest or other charges relate only to that period. But where the rate or rates of interest provided for under the agreement are not applicable on a per annum basis, this sub-paragraph does not require amounts and dates of interest which became due during the period to which the notice relates to be set out separately in the notice;
- (4) the amount and date of any movement in the account during the period to which the notice relates which is not required to be included in the notice under (2) and (3);
- (5) the balance under the agreement at the end of the period to which the notice relates;
- (6) that part of the balance referred to in (5) which comprises any sum which the *borrower* has failed to pay in full when it became due under the agreement and which remains unpaid at the end of the period to which the notice relates, whether or not such a sum has been included in a previous notice; and
- (7) add the following words to the end of the first sentence of the statement in ■ CONC 7.17.7R (6)(a): "(in addition to any default sums and interest included in this notice)."

7.17.10 **R** Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the *firm* must include wording explaining why it is not such a demand.

7.17.11

R

The reference to the account in ■ CONC 7.17.9R (2) and ■ CONC 7.17.9R (4) are to be construed as a reference to all accounts maintained by the *firm* (on behalf of a *lender*) which relate to the agreement with the *borrower*.



7.18 Notice of sums in arrears under P2P agreements for running-account credit

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 7.18: see ■ CONC TP 4.4]

Application

7.18.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement* for running account credit.

Notice of sums in arrears for running account credit

7.18.2 **R** A *firm* must comply with this section where the following conditions are satisfied:

- (1) a *borrower* is required to have made at least two *repayments* under the agreement;
- (2) the last two *repayments* which the *borrower* is required to have made before that time have not been made;
- (3) the *firm* has not already been required to give a notice under ■ CONC 7.18.3 R in relation to the agreement;
- (4) the *lender* is not already under a duty to give the *borrower* notice under section 86C of the CCA; and
- (5) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the *borrower*.

7.18.3 **R**

- (1) The *firm* must, when the *firm* next sends a statement to the *borrower*, give or send the *borrower* a notice including the information set out in ■ CONC 7.18.5 R.
- (2) A *firm* must accompany the notice required by (1) with a copy of the current arrears information sheet under section 86A of the CCA with the following modifications:
 - (-a) for the heading “Arrears” substitute “Arrears – peer-to-peer lending”;

- (a) for the bullet point headed “Work out how much money you owe” substitute:

“Work out how much money you owe. To do this, you will need to make a list of all those you owe money to. A debt adviser can help you.”

- (b) for the bullet point headed “Contact the organisations you owe money to” substitute:

“Contact the peer-to-peer (P2P) platform which arranged your loan. Let them know you are having problems. They may be able to discuss options for paying back what you owe.”

- (c) For the paragraph headed “Doing nothing could make things worse.” substitute:

“Doing nothing could make things worse.

You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase.”.

- (3) The *firm* must not charge the *borrower* a fee in connection with the preparation of or the giving of the notice required by (1).
- (4) The notice required by (1) may be incorporated in a statement or other notice which the *firm* gives to the borrower in relation to the agreement by virtue of *FCA rules* or the *CCA*.

7.18.4 **R** In this section “payments” means payments to be made at predetermined intervals provided for under the terms of the agreement.

Content of arrears notices: running account credit.....

7.18.5 **R** The notice referred to in **■ CONC 7.18.3 R** must contain the following information:

- (1) a form of wording to the effect that it is given in compliance with the *rules* because the *borrower* is behind with his payments under the agreement;
- (2) a form of wording encouraging the *borrower* to discuss the state of his account with the *firm*;
- (3) the date of the notice;
- (4) a description of the agreement sufficient to identify it;
- (5) (a) the name, telephone number, postal address and, where appropriate, any other address of the *firm*; or
(b) where the *firm* and the *borrower* have entered into an arrangement under which the *firm* has given the *borrower* details of a particular employee or category of employee of the *firm* whom the *borrower* is entitled to contact for all his dealings with

the *firm*, the *firm* may, instead of including the telephone number or numbers referred to in (a), refer to that arrangement;

- (6) in relation to each of the last two payments which the *borrower* is required under the agreement to have made and which have not been paid or not fully paid:
- (a) the amount payable;
 - (b) the date on which that amount became due;
 - (c) in the event that the *borrower* has paid part of that amount, the amount the *borrower* has paid and the date on which that payment was made;
 - (d) the nature of the amount due; and
 - (e) the aggregate of the amounts payable as shown under (a), less the aggregate of the amounts paid as shown under (c);

- (7) a statement in the following form:

"Missed and partly made payments

This notice does not give details of missed or partly made payments previously notified whether or not they remain unpaid."

- (8) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:

"Default sums and Interest

You may have to pay default sums and interest in relation to the missed or partly made payments indicated above in addition to any default sums and interest already included in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice."; or

- (b) in any other case, a statement in the following form:

"Default sums and Interest

You will not incur any default sums or extra interest in relation to the missed or partly made payments indicated above. This notice does not take account of any payments received after the date of the notice."; and

- (9) a statement in the following form:

"Financial Conduct Authority Information Sheet

This notice should include a copy of the current arrears information sheet issued by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example, to think carefully before borrowing money to repay debts, as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Financial Conduct Authority information sheet for more information about how to get advice on dealing with your debt."

7.18.6 **R** Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the *firm* must include wording explaining why it is not such a demand.

7.18.7 **R** (1) Subject to (2), where the total amount which the *borrower* has failed to pay in relation to the last two payments due under the agreement prior to the date on which the *firm* came under a duty to give the *borrower* a notice under **CONC 7.18.3 R** is not more than £2, the notice:

(a) need not include any of the information or statements referred to in **CONC 7.18.4 R**;

(b) but, in that event, shall contain a statement in the following form:

"You have failed to make two minimum payments

Failing to make minimum payments can mean that you have broken the terms of this credit agreement. This could result in your having to pay additional costs. A copy of the Financial Conduct Authority Arrears information sheet is enclosed, which contains more information about what to do when you get behind with your payments.";

(2) Paragraph (1) does not apply where at the date on which the duty to give notice arose a default sum or other charge has become payable as a result of the *borrower's* failure to pay sums as set out in (1).



7.19 Notice of default sums under P2P agreements

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 7.19: see ■ CONC TP 4.5]

Application

- 7.19.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement*.
- 7.19.2 **R**
- (1) Subject to (2), this section does not apply where the *P2P agreement* provides for *credit* of less than £50.
 - (2) Paragraph (1) does not apply where two or more *P2P agreements* in relation to the same *borrower* (but whether or not with the same *lender*) are entered into at or about the same time.
 - (3) Where (2) applies, the *firm's* obligation in ■ CONC 7.19.4 R applies as if all of the *P2P agreements* made with a *borrower* at or about the same time were a single agreement.
- 7.19.3 **R**
- (1) In this section "default sum" means in relation to the *borrower* under a *P2P agreement*, a sum (other than a sum of interest) which is payable by the *borrower* under the agreement in connection with a breach of the agreement by the *borrower*.
 - (2) But a sum is not a default sum in relation to the *borrower* simply because as a consequence of the breach of the agreement the *borrower* is required to pay the sum earlier than would otherwise have been the case.

Notice of default sums

- 7.19.4 **R** Where a default sum becomes payable under a *P2P agreement* by the *borrower*, the *firm* must give notice to the *borrower* within 35 days of a default sum becoming payable by the *borrower*.
- 7.19.5 **R** The notice required by ■ CONC 7.19.4 R must contain:
- (1) a form of wording to the effect that it relates to default sums and is given in compliance with *FCA rules*;

- (2) the date of the notice;
- (3) a description of the agreement sufficient to identify it;
- (4) the *firm's* name, telephone number, postal address and, where appropriate, any other address;
- (5) the amount and nature of each default sum payable under the agreement which has not been the subject of a previous notice of default sums;
- (6) the date upon which each default sum referred to in the notice became payable under the agreement;
- (7) the following statement:

"This notice does not take account of default sums which we have already told you about in another default sum notice, whether or not those sums remain unpaid."; and
- (8) the total amount of all the default sums included in the notice.

Chapter 8

Debt advice

8.1 Application

- 8.1.1** **R** This chapter applies, unless otherwise stated in or in relation to a *rule* to every *firm* with respect to:
- (1) *debt counselling*;
 - (2) *debt adjusting*; and
 - (3) to the extent of giving the advice referred to in article 89A(2) of the *Regulated Activities Order*, *providing credit information services*.
- 8.1.2** **G** ■ CONC 8.10 (Conduct of business: providing credit information services) sets out that that section applies to every *firm* with respect to *providing credit information services* and with respect to *operating an electronic system in relation to lending* in relation to activities specified in article 36H(3)(e) to (h) of the *Regulated Activities Order* which are similar to *providing credit information services*.
- 8.1.3** **G** ■ CONC 8 covers all *firms* with respect to *debt counselling*, *debt adjusting* and *providing credit information services*, which includes profit-seeking as well as *not-for-profit bodies* which hold such *permissions* and in that case include those bodies with *permission* by virtue of article 62 of the *Regulated Activities Order*.
- [Note: paragraph 1.10 of *DMG*]
- 8.1.3A** **R** ■ CONC 8.3.1R(14) does not apply to a *firm* with respect to *providing credit information services*.
- 8.1.4** **G** The activities of *debt counselling* and *debt adjusting* apply to *credit agreements* and *consumer hire agreements* whether they are regulated or not.



8.2 Conduct standards: debt advice

Overarching principles

8.2.1 **G** The Principles for Businesses (*PRIN*) apply as a whole to *firms* with respect to *debt counselling, debt adjusting and providing credit information services*.

8.2.2 **G** (1) One aspect of conducting a *firm's* business with due skill, care and diligence under *Principle 2* is that a *firm* should ensure that it gives appropriate advice to *customers* residing in the different countries of the *UK*. Failure to pay proper regard to the differences in options for *debt solutions* available to those *customers* and to the differences in enforcement actions and procedures is likely to contravene *Principle 2* and may contravene other *Principles*.

[Note: paragraph 3.23d of *DMG*]

(2) Recommending a *debt solution* which a *firm* knows, believes or ought to suspect is unaffordable for the *customer* is likely to contravene *Principle 2, Principle 6 and Principle 9* and may contravene other *Principles*. The *firm* should also take into account the expected term of the proposed *debt solution*, having regard to the *Principles*.

[Note: paragraph 3.26j of *DMG*]

(3) An example of behaviour that is likely to contravene *Principle 6* and may contravene other *Principles* in this field is for a *firm* to actively discourage a *customer* from considering alternative sources of *debt counselling*.

[Note: paragraph 3.23m of *DMG*]

8.2.3 **G** A *firm* covered by **CONC 8** has obligations under the *FCA's* Dispute Resolution: Complaints sourcebook (*DISP*) to treat complainants fairly; these are set out in **DISP 1**.

Signposting to sources of free debt counselling, etc

8.2.4 **R** A *debt management firm* must prominently include:

(1) in its first written or oral communication with the *customer* a statement that free *debt counselling, debt adjusting and providing of credit information services* is available to *customers* and that the *customer* can find out more by contacting *MoneyHelper*; and

(2) on its web-site the following link to the *MoneyHelper* web-site (<https://www.moneyhelper.org.uk/en/money-troubles/dealing-with-debt/use-our-debt-advice-locator>).

[Note: paragraph 1.7 of Debt Management Protocol]

Dealing with lenders of customers

8.2.5 **R** A *firm's* communications to *lenders* (or to *lenders'* representatives) on behalf of its *customers* must be transparent so as to ensure a *firm's customer's* interests are not adversely affected.

[Note: paragraph 2.5 of *DMG*]

8.2.6 **R** Where entry into a *debt solution* will lead to a period when payments to *lenders* (in part or in whole) are not made or are retained by the *firm*, the *firm* must, as soon as possible after the *customer* enters into the *debt solution*, notify the *customer's lenders* of the reason payments are not to be made to the *lender* and the period during which that will be the case.

[Note: paragraph 3.18niv of *DMG*]

Vulnerable customers

8.2.7 **R** A *firm* must establish and implement clear and effective policies and procedures to identify particularly vulnerable *customers* and to deal with such *customers* appropriately.

[Note: paragraph 2.4 of *DMG*]

8.2.8 **G** Most *customers* seeking advice on their debts under *credit agreements* or *consumer hire agreements* may be regarded as vulnerable to some degree by virtue of their financial circumstances. Of these *customers* some may be particularly vulnerable because they are less able to deal with *lenders* or *debt collectors* pursuing them for debts owed. *Customers* with mental health and mental capacity issues may fall into this category.

[Note: paragraph 2.4 of *DMG*]

8.3 Pre contract information and advice requirements

8.3.1

R

A *firm* must (except where the contract is a *credit agreement* to which the *disclosure regulations* apply) provide sufficient information, in a *durable medium*, when the *customer* first enquires about the *firm's* services, about the following matters to enable the *customer* to make a reasonable decision:

- (1) the nature of the *firm's* service offered in the contract to the *customer*;

[Note: paragraph 3.38b of *DMG*]

- (2) the duration of the contract;

[Note: paragraph 3.38c of *DMG*]

- (3) the total cost of the *firm's* service or, where it is not possible to state the total cost, the formula the *firm* uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;

[Note: paragraph 3.40c of *DMG*]

- (4) any fee or deposit, such as an arrangement fee, a periodic fee, a management fee, or an administrative fee;

[Note: paragraph 3.38c of *DMG*]

- (5) any fee or charge which can be imposed on the *customer* in relation to cancellation of the contract;

[Note: paragraph 3.38c of *DMG*]

- (6) any other costs likely to be incurred under the contract and the circumstances in which these would be payable;

[Note: paragraph 3.38c of *DMG*]

- (7) where the *firm* bases its fees or charges on some percentage or an hourly rate or some other formula, an explanation of how the fees or charges are calculated;

[Note: paragraph 3.9c of *DMG*]

- (8) the elements of the service that the fees cover;

[Note: paragraph 3.38c of *DMG*]

- (9) the circumstances in which a *customer* may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the *customer* may be required to pay in that case;

[Note: paragraph 3.40d of *DMG*]

- (10) the consequences on the *customer's* credit rating, including how long the matter will show on the *customer's* credit file and that the *customer* may not be able to obtain *credit* or other financial services in the future;

[Note: paragraph 3.38e of *DMG*]

- (11) whether a right to cancel applies and, if so, the period and any conditions for exercising the right to cancel the contract and any amount the *customer* may be required to pay;

[Note: paragraph 3.38h of *DMG*]

- (12) how payments will be allocated to *lenders* and when payments will be made; and

[Note: paragraph 3.38k of *DMG*]

- (13) the period of time between payments being received from the *customer* and payments being made to *lenders*, including the date when the first payment will be made to *lenders*.

[Note: paragraph 3.38l of *DMG*]

- (14) an explanation that compensation might be available from the *compensation scheme* if there is a *shortfall* in *client money* held by the *firm* for that *customer*.

[Note: paragraphs 3.33, 3.35 and 3.38 of *DMG*]

8.3.2

R

A *firm* must ensure that:

- (1) all advice given and action taken by the *firm* or its agent or its *appointed representative*:
- (a) has regard to the best interests of the *customer*;
 - (b) is appropriate to the individual circumstances of the *customer*;
- and
- (c) is based on a sufficiently full assessment of the financial circumstances of the *customer*;

[Note: paragraph 2.6a of *DMG*]

- (2) *customers* receive sufficient information about the available options identified as suitable for the *customers'* needs; and

[Note: paragraph 2.6b of *DMG*]

- (3) it explains the reasons why the *firm* considers the available options suitable and other options unsuitable.

[Note: paragraph 2.6b of *DMG*]

8.3.2A **G** *Firms are reminded of ■ PERG 12.6G which contains guidance on the regulated activity of advising on conversion or transfer of pension benefits.*

8.3.3 **G** *The individual circumstances of the customer include, for example, the customer's financial position, the country in the UK to whose laws and procedures the customer and the lender in question are subject, and the level of understanding of the customer.*

[Note: paragraph 2.6c of *DMG*]

8.3.4 **R** *A firm must ensure that advice provided to a customer, whether before the firm has entered into contract with the customer or after, is provided in a durable medium and:*

- (1) *makes clear which debts will be included in any debt solution and which debts will be excluded from any debt solution;*

[Note: paragraph 3.38j of *DMG*]

- (2) *makes clear the actual or potential advantages, disadvantages, costs and risks of each option available to the customer, with any conditions that apply for entry into each option and which debts may be covered by each option;*

[Note: paragraphs 3.23a and 3.38b of *DMG*]

- (3) *warns the customer:*

- (a) *of the actual or potential consequences of failing to continue to pay taxes, fines, child support payments and debts which could result in loss of access to essential goods or services or repossession of, or eviction from, the customer's home;*

[Note: paragraph 3.38m of *DMG*]

- (b) *of the actual or potential consequences of not continuing to make repayments under credit agreements or consumer hire agreements;*

[Note: paragraph 3.26k of *DMG*]

- (c) *of the actual or potential consequences of ignoring correspondence or other contact from lenders and those acting on behalf of lenders;*

[Note: paragraph 3.38n of *DMG*]

- (d) *that action to recover debts may be commenced, which may involve further cost to the customer; and*

[Note: paragraph 3.38q of *DMG*]

- (e) *that by entering into a debt management plan or another non-statutory repayment plan there is no guarantee that any current recovery or legal action will be suspended or withdrawn;*

[Note: paragraph 3.38r of *DMG*]

- (4) where relevant to the *debt solution*, makes clear the risks, including the following risks:
 - (a) if the arrangement or deed fails, the risk of bankruptcy;
 - (b) homeowners may need to release equity from the value of their homes to pay off debts; and that a remortgage may attract higher interest rates or that if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;
 - (c) there are restrictions on the expenditure of a *person* who enters into an individual voluntary arrangement or protected trust deed;
 - (d) the *customer's lenders* may not approve the individual voluntary arrangement or protected trust deed; and
 - (e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding;

[Note: paragraph 3.38s of DMG]

- (5) takes proper account of the individual needs of, and any requests made by, a *customer*; and

[Note: paragraph 3.23f of DMG]

- (6) where relevant, explains the nature of an insolvency procedure and the role of the *firm*.

[Note: paragraph 3.23o of DMG]

[Note: paragraphs 3.23 and 3.38 of DMG]

8.3.4A

R

- (1) If a *firm* has not entered into a contract with a *customer*, and is satisfied on reasonable grounds that it is unlikely to do so, ■ CONC 8.3.4R applies in relation to that *customer* as if the words “is provided in a *durable medium* and” were omitted.
- (2) The *firm* must keep a record of the grounds in (1).

8.3.5

G

The information required by ■ CONC 8.3.4R should be provided leaving sufficient time for the *customer* (taking into account the complexity of the information and the *customer's* financial position) to consider it before having to make a decision on the appropriate course of action.

8.3.6

G

A *firm* should not unfairly incentivise debt advisers (whether employees, agents or *appointed representatives* of the *firm*) to the extent that an incentive might lead the *firm* not to comply with ■ CONC 8.3.2R.

[Note: paragraph 3.22 (box) of DMG]

8.3.6A

G

- (1) *Firms* must provide advice in a *durable medium*, unless ■ CONC 8.3.4AR applies. Where questions over the application of that exemption may arise, for example, in relation to advice given to a *customer* at an

initial meeting or telephone call, the following considerations may be relevant:

- (a) if a *firm* never charges for advice and never enters into contracts with *customers* for *debt solutions*, ■ CONC 8.3.4AR may remove the requirement to provide advice to the *customer* in a *durable medium*; and
 - (b) if a *firm* enters into contracts with *customers* (in relation to advice, to a *debt solution*, or to some other matter), it will need to consider, at the early stages of contact with a *customer*, whether a contract with that *customer* may follow. A *firm* is only likely to be able to satisfy itself on that point once discussions with a *customer* have advanced to a stage where it is reasonable to conclude that it is more likely than not that the *firm* will not enter into a contract with the *customer*. The *firm* should keep a record of its reasons for being satisfied on the point.
- (2) Where the exemption in ■ CONC 8.3.4AR applies, the *firm* should consider whether it may nevertheless be appropriate to comply with ■ CONC 8.3.4R in certain cases, for example where complex advice is given.

8.3.7

R

A *firm* must:

- (1) provide the *customer* with a source of impartial information on the range of *debt solutions* available to the *customer* in the relevant country of the *UK*;

[Note: paragraph 3.23b of *DMG*]

- (2) before giving any advice or any recommendation on a particular course of action in relation to the *customer's debts*, carry out a reasonable and reliable assessment of:
 - (a) the *customer's* financial position (including the *customer's* income, capital and expenditure);
 - (b) the *customer's* personal circumstances (including the reasons for the financial difficulty, whether it is temporary or longer term and whether the *customer* has entered into a *debt solution* previously and, if it failed, the reason for its failure); and
 - (c) any other relevant factors (including any known or reasonably foreseeable changes in the *customer's* circumstances such as a change in employment status);

[Note: paragraph 3.23c of *DMG*]

- (3) refer a *customer* to an appropriate *not-for-profit debt advice body* in circumstances where the *customer*:
 - (a) has problems related to debt requiring immediate attention with which the *firm* is unable or unwilling to assist the *customer*; or

[Note: paragraph 3.23gi of *DMG*]

- (b) does not have enough disposable income to pay the *firm's* fees;

[Note: paragraph 3.23gii of *DMG*]

8.3.8

G

- (4) refer a *customer* to, or provide contact details for, another debt advice provider in circumstances where the *firm* is unable to provide appropriate advice or provide an appropriate *debt solution* for the *customer*; and

[Note: paragraph 3.23h of *DMG*]

- (5) seek to ensure that a *customer* understands the options available and the implications and consequences for the *customer* of the *firm's* recommended course of action.

[Note: paragraph 3.23i of *DMG*]

- (1) The information and advice referred to in ■ CONC 8.3 should be provided in a manner which is clear fair and not misleading to comply with *Principle 7* and ■ CONC 3.3.1 R, and should be in plain and intelligible language in accordance with ■ CONC 3.3.2 R. A *firm* should encourage a *customer* to read the information and allow sufficient time between providing the information and entering into the contract to enable the *customer* to seek independent advice if so desired.

[Note: paragraphs 3.21, 3.35 and 3.36 of *DMG*]

- (2) The *firm's* services referred to in ■ CONC 8.3 include any *debt solution* the *firm* offers to a *customer*. Therefore, in setting out fees or charges for a *firm's* services, the fees and charges the *firm* charges in relation to a *debt solution* should be included.

- (3) The serious problems related to debt in ■ CONC 8.3.7 R are likely to include, where non-payment of a debt may result in the loss of a *customer's* home or loss of access to essential goods or services and, in particular, where legal action is threatened or legal action is taken in relation to debts which may have that effect.

[Note: paragraph 3.23gi of *DMG*]

- (4) A *not-for-profit debt advice body* should refer a *customer* to another *not-for-profit debt advice body* under ■ CONC 8.3.7R (3) where, for example, it is unable to assist a *customer*.

- (5) An appropriate *not-for-profit debt advice body* would be one that provides the most appropriate *debt solution* given the *customer's* financial circumstances.

Prohibition on debt packager remuneration from debt solution providers Scope

8.3.9

R

- (1) ■ CONC 8.3.11R to ■ CONC 8.3.15R:
 - (a) apply to a *firm* with respect to *debt counselling* where the *firm* does not itself provide *debt solutions*; and
 - (b) do not apply to a *firm* that is a *not-for-profit debt advice body*.
- (2) A *firm* is treated as not itself providing *debt solutions* for the purposes of ■ CONC 8.3.9R(1)(a) where the *firm*:

- (a) provides *debt solutions* on a single or occasional basis; and/or
- (b) receives only an insignificant amount of its total annual revenue from providing *debt solutions*.

Context, purpose and anti-avoidance

8.3.10

G

- (1) *Firms* are reminded that when referring *customers* to *debt solution* providers, or carrying on related services, a *firm* must comply with its obligations under:
 - (a) *Principle 12* (Consumer Duty) to act to deliver good outcomes for *retail customers* and/or *Principle 6* (Customers' interests) to pay due regard to the interests of its *customers* and treat them fairly; and
 - (b) ■ CONC 8.3.2R(1) to ensure that all advice given and action taken by the *firm*, its agent or its *appointed representative*:
 - (i) has regard to the best interests of the *customer*;
 - (ii) is appropriate to the individual circumstances of the *customer*; and
 - (iii) is based on a sufficiently full assessment of the financial circumstances of the *customer*.
 - (c) The purpose of the prohibition in ■ CONC 8.3.11R is to remove the conflict of interest between a debt packager's obligations under CONC, including those referred to in ■ CONC 8.3.10G(1), and the financial incentive to act in a way which generates revenue in the form of referral fees from *debt solution* providers.
 - (d) The effect of ■ CONC 8.3.9R(2) is that *firms* will not be able to avoid the prohibition in ■ CONC 8.3.11R by starting to provide a small number of *debt solutions* for that purpose.
 - (e) For the purposes of ■ CONC 8.3.9R(2)(b), the amount of total annual revenue received from providing *debt solutions* is unlikely to be considered significant if an undue risk of non-compliant debt advice arising out of a conflict of interest of the kind described in ■ CONC 8.3.10G(2) continues to exist.
 - (f) For the purposes of ■ CONC 8.3.10G(1)(a), during the period to which ■ CONC TP 8(6) to (7) applies, the *FCA* considers it unlikely that an increase in either the referral of *customers* to *debt solution* providers or carrying on related services, would be in accordance with *Principle 6* or *Principle 12*.

Prohibition

8.3.11

R

- (1) A *firm* must not (and must take all reasonable steps to ensure that none of its *associates* or its *appointed representatives*):
 - (a) enter into an agreement to receive;
 - (b) solicit or accept; or
 - (c) seek to exercise, enforce or rely on rights or obligations under an agreement to receive,
 any commission, fee or any other financial consideration, directly or indirectly, from a *debt solution* provider in connection with the *firm*

referring *customers* to a *debt solution* provider, or any other related services, except as provided in ■ CONC 8.3.14R.

- (2) ■ CONC 8.3.11(1)(b) and ■ (c) do not apply where the *firm* has an accrued contractual right to payment for the referral, or related services, in relation to a *customer* prior to the coming into force of ■ CONC 8.3.11R(1).

8.3.12 **R** 'Related service(s)' for the purposes of ■ CONC 8.3.9R to ■ CONC 8.3.11R includes:

- (1) recommending a *debt solution* provider;
- (2) providing *debt counselling* services to *customers* prior to those *customers* being referred to a *debt solution* provider or entering into a *debt solution*; and
- (3) providing *debt counselling* services to *customers* who have been referred to the *firm* by a *debt solution* provider.

8.3.13 **R** '*Debt solution* provider(s)' for the purposes of ■ CONC 8.3.10G to ■ CONC 8.3.12R includes such providers' *associates* and *appointed representatives*.

8.3.14 **R** ■ CONC 8.3.11R does not apply to payments made:

- (1) pursuant to an enactment;
- (2) in relation to the administration by a 'money adviser' approved under The Debt Arrangement Scheme (Scotland) Regulations 2011 of a *customer's* application for a Debt Arrangement Scheme under those Regulations; or
- (3) by a person employed as an officer of:
 - (a) (in relation to England and Wales) the Insolvency Service;
 - (b) (in relation to Scotland) the Accountant in Bankruptcy; or
 - (c) (in relation to Northern Ireland) the Insolvency Service.

Record keeping

8.3.15 **G** *Firms* are reminded of their obligations in ■ SYSC 9.1.1R to keep orderly records, which must be sufficient to enable the *FCA* to monitor the *firm's* compliance with the requirements of the *regulatory system*.

Application of the prohibition to appointed representatives

8.3.16 **R** *Principals* which have an *appointed representative* to whom ■ CONC 8.3.9R(1) would apply if the *appointed representative* were an *authorised person* must take all reasonable steps to ensure that such an *appointed representative* complies with ■ CONC 8.3.11R as if the references in that *rule* to '*firm*' applied to such an *appointed representative*.

8.3.17

G

The purpose of ■ CONC 8.3.16R is to prevent a debt packager *firm* from becoming an *appointed representative* in order to avoid ■ CONC 8.3.11R applying to it and continuing to be conflicted by the financial incentive to act in a way which generates revenue from *debt solution* providers.

8.4 Debt solution contracts

- 8.4.1** **R** A *firm* must provide a *customer* with a written contract setting out its terms and conditions for the provision of its services.
[Note: paragraph 3.40a of DMG]
- 8.4.2** **R** A *firm* must include in its written contract (other than a *credit agreement* to which the Consumer Credit (Agreements) Regulations 2010 apply) the following matters:
- (1) the nature of the service to be provided by the *firm*, including the specific *debt solution* to be offered to the *customer*;
[Note: paragraph 3.40b of DMG]
 - (2) the duration of the contract;
[Note: paragraph 3.40c of DMG]
 - (3) the total cost of the *firm's* service or, where it is not possible to state the total cost, the formula the *firm* uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;
[Note: paragraph 3.40c of DMG]
 - (4) the circumstances in which a *customer* may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the *customer* may be required to pay in that case; and
[Note: paragraph 3.40d of DMG]
 - (5) set out the duration and conditions for exercise of any right to cancel that may apply and any fees or charges the *customer* may be required to pay.
[Note: paragraph 3.40e of DMG]
- 8.4.3** **R** A *firm* must not include the following terms in a contract with a *customer*:
- (1) a term requiring the *customer* to sign a declaration stating in any way that the *customer* understands the requirements of the contract;
[Note: paragraph 3.41a of DMG]

- (2) a term restricting or prohibiting the *customer* from corresponding with or responding to a *lender* or with any *person* acting on behalf of a *lender*;

[Note: paragraph 3.41b of *DMG*]

- (3) a term which states or implies the *firm* has no liability to the *customer*; or

[Note: paragraph 3.41c of *DMG*]

- (4) a term which states or implies that there are no circumstances in which a *customer* is entitled to a refund.

[Note: paragraph 3.41d of *DMG*]

8.4.4

- G** A *firm* may be required to make a refund of its fees and charges, in whole or in part, if a *firm* fails to deliver its service in whole or in part or it has carried out the service without reasonable care and skill.

8.5 Financial statements and debt repayment offers

8.5.1 **R** A *firm* must ensure that a financial statement sent to a *lender* on behalf of a *customer*:

(1) is accurate and realistic and must present a sufficiently clear and complete account of the *customer's* income and expenditure, debts and the availability of surplus income;

[Note: paragraph 3.24 of *DMG*]

(2) state any fees or charges being made by the *firm*;

(3) is sent only after having obtained the *customer's* consent to send the statement and the *customer's* confirmation as to the accuracy of the statement;

[Note: paragraph 3.26f and g of *DMG*]

(4) is provided to the *customer's lenders* as soon as practicable after the *customer* has confirmed its accuracy; and

[Note: paragraph 3.26e of *DMG*]

(5) is also sent to the *customer*, together with any accompanying correspondence.

[Note: paragraph 3.26h of *DMG*]

8.5.2 **G** The format of the financial statement sent to *lenders* on behalf of the *customer* should be uniform and logically structured in a way that encourages consistent responses from *lenders* and reduces queries and delays. *Firms* may wish to use the Common Financial Statement formerly facilitated by the Money Advice Trust, the Standard Financial Statement (SFS) facilitated by *MoneyHelper*, or an equivalent or similar statement.

[Note: paragraph 3.24 of *DMG*]

8.5.3 **G** (1) Where a *firm* makes an offer to a *lender* to repay a *customer's* debts on behalf of a *customer*, the offer should be realistic, sustainable and in accordance with **CONC 8.3.2 R** should, in particular, have regard to the best interests of the *customer*.

- (2) A sustainable offer should enable the *customer* to meet *repayments* in full when they are due out of the *customer's* disposable income for the whole duration of the repayment proposal.
- (3) Setting the offer should take full account of a *customer's* obligations to pay taxes, fines, child support payments and those debts which could result in loss of access to essential *goods* or services or repossession of, or eviction from, the *customer's* home.
- (4) In considering what are essential *goods* and services, the *firm* should consider the *customer's* personal circumstances, for example, for disabled persons debts for telecommunications services are likely to be essential.

[Note: paragraphs 3.25, 3.26c and 3.28d of *DMG*]

8.5.4

R

A *firm* must:

- (1) take reasonable steps to verify the *customer's* identity, income and outgoings;

[Note: paragraph 3.26a of *DMG*]

- (2) seek explanations if a *customer* indicates expenditure which is particularly high or low; and

[Note: paragraph 3.26b of *DMG*]

- (3) where applicable, notify a *customer* that a particular *lender* will not deal with the *firm* (for whatever reason), as soon as possible after the *firm* becomes aware that the *customer* owes a debt to that *lender*.

[Note: paragraph 3.26l of *DMG*]

8.5.5

G

What are reasonable steps for verification of the identity, income and outgoings of a *customer* depends on the circumstances of the case and the type of service offered by the *firm*. Estimates of expenditure would be reasonable where precise figures are not readily available. The Common Financial Statement includes expenditure guidelines, but where a *firm* uses the Common Financial Statement or an equivalent or similar statement which includes such guidelines, the use of expenditure guidelines needs to take into account the individual circumstances of the *customer*.

Note: paragraph 3.26a (box) of *DMG*

8.6 Changes to contractual payments

- 8.6.1** **R** (1) Where a *firm* gives advice to a *customer* not to make a contractual *repayment* or to cancel any means of making such a *repayment* before any *debt solution* is agreed or entered into, the *firm* must be able to demonstrate the advice is in the *customer's* best interests.
- (2) Where a *firm* gives advice of the type in (1), the *firm* must advise the *customer* (C) that if C adopts the advice C should notify C's *lenders* without delay and explain that C is following the *firm's* advice to this effect.
- [Note: paragraph 3.27 of *DMG*]
- 8.6.2** **R** If the effect of advice the *firm* gives (if adopted by the *customer*) is that contractual *repayments* are not made or are not made in full (for one or more *repayments*), the *firm* must warn the *customer* of the actual or potential consequences of taking that course of action.
- [Note: paragraph 3.28a of *DMG*]
- 8.6.3** **R** A *firm* must only advise a *customer* to make *repayments* at a rate lower than the rate necessary to meet interest and charges accruing where it is in the *customer's* best interests.
- [Note: paragraph 3.28b of *DMG*]
- 8.6.4** **G** (1) The *FCA* expects it will generally be in the *customer's* best interests to maintain regular payments to *lenders* (even if the repayment is less than the full sum due).
- (2) An example where it might be in the *customer's* best interests not to repay at the rate necessary to meet interest and charges accruing is where there is insufficient disposable income to meet essential expenditure of the type referred to in **CONC 8.5.3 G**. Where that is the case, the *firm* should explain clearly to the *customer* why this course of action is necessary and the consequences of the course of action.
- 8.6.5** **R** Where a *firm* has advised a *customer* not to make contractual *repayments* (in full or in part) or to cancel the means of making such payments or not to make *repayments* necessary to meet interest and charges accruing, the *firm* must advise the *customer* if it becomes clear that that course of action is not

producing effects in the *customer's* best interests to enable the *customer* to take action in the *customer's* best interests.

Note: paragraph 3.28c of *DMG*]

8.6.6**G**

- (1) An example of an effect not in the *customer's* best interests would be if a *lender* does not agree to stop applying interest and charges to the *customer's* debt.

[Note: paragraph 3.28c of *DMG*]

- (2) Where it becomes clear that the course of action in ■ CONC 8.6.5 R is not producing effects in the *customer's* best interests the *firm* should, where withdrawing from the *debt management plan* may be in the *customer's* best interests, advise the *customer* of the possibility of withdrawing from the plan.

8.7 Charging for debt counselling, debt advice and related services

8.7.1

G

- (1) The distance marketing *rules* in ■ CONC 2.6, including the right to cancel in ■ CONC 11, apply to *firms* with respect to *distance contracts* which are *credit agreements, consumer hire agreements* and agreements the subject matter of which comprises, or relates to, *debt counselling, debt adjusting, providing credit information services* and *providing credit references*. ■ CONC 11 excludes various *credit agreements* from the right to cancel.
- (2) Where a *consumer* uses the right to cancel under ■ CONC 11 or under the Financial Services (Distance Marketing) Regulations 2004 to cancel an agreement with a *firm* to set up or administer a *debt solution*, the *firm* should refund any sum paid, less a charge that the *firm* is entitled to make under ■ CONC 11.1.11 R or regulation 13(6) to (9) of those Regulations.

[Note: paragraphs 3.29 and 3.31 of DMG]

- (3) The firm may be entitled to impose a charge in (2) if the *customer* requested the *firm* to begin to carry out its service within the cancellation period (see ■ CONC 11.1.1 R or regulation 10 of the Financial Services (Distance Marketing) Regulations 2004).

8.7.2

R

A *firm* must ensure that the obligations of the *customer* in relation to the amount, or the timing of payment, of its fees or charges:

- (1) do not have the effect that the *customer* pays all, or substantially all, of those fees in priority to making *repayments to lenders* in accordance with the *debt management plan*; and
- (2) do not undermine the *customer's* ability to make (through the *firm* acting on the *customer's* behalf) significant *repayments* to the *customer's lenders* throughout the duration of the *debt management plan*, starting with the first *month* of the plan; but
- (3) paragraphs (1) and (2) do not prevent, to the extent the *firm* complies with all applicable *rules*, a *firm* operating a full and final settlement model, in which the *firm* holds money on behalf of the *customer* and does not distribute that money promptly, pending negotiating a settlement with the *customer's lenders*.

[Note: paragraphs 5.3 and 5.4 of the Debt Management Protocol]

8.7.3

G

- (1) For the purposes of ■ CONC 8.7.2R (2), an obligation is likely to be viewed as undermining the *customer's* ability to make significant repayments to the *customer's lenders* if it has the effect that the *firm* may allocate more than half of the sums received from the *customer* in any one-month period from the start of the *debt management plan* to the discharge (in whole or in part) of its fees or charges.
- (2) Once the *customer* has paid any initial fee for the arrangement and preparation of the *debt management plan*, or, if earlier, once six months from the start of the plan have elapsed, the *FCA* would expect there usually to be a reduction in the proportion of the sums received from the *customer* that the *firm* allocates to the discharge of its fees and charges.
- (3) A *firm* should spread any charges or fees payable by the *customer* for the administration or operation of the *debt management plan* following its making evenly over the duration of the plan.
- (4) The proportion of the sums received from a *customer* in order to discharge the *firm's* fees or charges should take account of the level of *repayments* the *customer* in question makes.

8.7.4

R

A *firm* must:

- (1) in good time before entering into a contract with the *customer*, disclose the existence of any commission or incentive payments relevant to the service provided to the *customer* between the *firm* and any third party and at any time, if the *customer* requests, disclose the amount of any such commission or incentive payment;

[Note: paragraph 3.34b and c of *DMG*]

- (2) send a revised financial statement in the same format as that required under ■ CONC 8.5.1 R to the *customer's lenders* where the *firm's* fees or charges alter during an arrangement and would affect the amount available for distribution to *lenders*;

[Note: paragraph 3.34f (box) of *DMG*]

- (3) at the earlier of, where the *firm* identifies or it is established that advice provided by the *firm* to the *customer* was incorrect or was not appropriate to the *customer*, refund or credit to the *customer's* account fees or charges imposed for that advice;

[Note: paragraph 3.34m of *DMG*]

- (4) make an appropriate refund of fees or charges paid where the whole or any part of the service as agreed with the *customer* has not been provided or not provided with a reasonable standard of skill and care.

[Note: paragraph 3.34o of *DMG*]

8.7.5

G

A *firm*, in presenting its fees, costs and charges, should distinguish the fees payable for the *firm's* services from any charges payable for court proceedings or other insolvency proceedings.

8.7.6

RA *firm* must not:

- (1) without a reasonable justification, switch a *customer* from one *debt solution* to another while making a further charge for setting up or administering the new *debt solution* to the extent that some or all of that work has already been carried out by the *firm*;

[Note: paragraphs 3.32 and 34k of *DMG*]

- (2) switch a *customer* to a different *debt solution*, without obtaining the *customer's* consent after having fully explained to the *customer* the reason for the change;

[Note: paragraph 3.34l of *DMG*]

- (3) require or take any payment from a *customer* before the *firm* has entered into contract with the *customer* concerning a *debt solution*;

[Note: paragraph 3.34d of *DMG*]

- (4) request any payment from a *customer's* payment account, unless the *customer* has specifically authorised the *firm* to do so and has not cancelled that authorisation;

[Note: paragraph 3.34d (box) of *DMG*]

- (5) accept payment for fees or charges by credit card or another form of *credit* (excluding a payment where the *firm* does not know and cannot be expected to know that the *customer's* current account is in debit or would be taken into debit by the payment);

[Note: paragraph 3.34e of *DMG*]

- (6) impose cancellation charges that are unreasonable or disproportionate when compared to the actual costs necessarily incurred by the *firm* in reasonably providing its service;

[Note: paragraph 3.34h of *DMG*]

- (7) claim a fee or charge from a *customer* or take payment from a *customer's* account which is not provided for in the agreement with the *customer*, or where it is provided for but is, or is likely to be, unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (for contracts entered into before 1 October 2015) or the Consumer Rights Act 2015;

[Note: paragraph 3.34i of *DMG*]

- (8) where the *firm* identifies that advice provided by the *firm* to the *customer* was incorrect or was not appropriate to the *customer*, charge an additional fee for further or revised advice; or

[Note: paragraph 3.34m of *DMG*]

- (9) request, suggest or instruct *customers* seeking to recover refunds of fees from the *firm* to make contact with the *firm* on a premium rate telephone number.

[Note: paragraph 3.34n of *DMG*]

8.7.7

R

Firms should note the effect of the *call charges rule* in ■ GEN 7.

8.8 Debt management plans

8.8.1

R

A *firm* in relation to a *customer* with whom it has entered into a *debt management plan* must:

- (1) maintain contact with the *customer*;
[Note: paragraph 3.44 of *DMG*]
- (2) regularly monitor and review the financial position and circumstances of the *customer*;
[Note: paragraph 3.44 of *DMG*]
- (3) adapt the *debt management plan* to take into account relevant changes in the financial position and circumstances of the *customer*;
[Note: paragraph 3.44 of *DMG*]
- (4) inform the *customer* without delay of the outcome of negotiations with *lenders*, in particular, where the *lender* has:
 - (a) refused to deal with the *firm*; or
 - (b) returned payments to the *firm*; or
 - (c) refused the debt repayment offer; or
 - (d) refused to freeze interest or charges accruing;[Note: paragraph 3.45a of *DMG*]
- (5) inform the *customer* of any material developments about the relationship between the *customer* and the *customer's lenders*;
[Note: paragraph 3.45b of *DMG*]
- (6) provide the *customer* with copies of correspondence or documentation relating to material developments relevant to the relationship between the *customer* and the *customer's lenders*;
[Note: paragraph 3.45b of *DMG*]
- (7) where the *firm* makes *repayments* on behalf of the *customer*:
 - (a) monitor the *customer's repayments* for evidence which suggests a change in the *customer's* financial circumstances;
 - (b) review, and amend or terminate, where appropriate, the *customer's debt management plan* at the earlier of:

- (i) each anniversary of entering into the plan; or
- (ii) as soon as the *firm* becomes aware of a material change in the *customer's* circumstances; and
- (c) inform the *customer* of the outcome of any reassessment;

[Note: paragraph 3.45c of DMG]

- (8) provide a statement to the *customer* at the start of the *debt management plan*, and at least annually or at the *customer's* reasonable request, setting out:
 - (a) a balance showing the amount owed by the *customer*, including any interest charges at the beginning of the statement period;
 - (b) fees, charges and other costs applied over the period of the statement, including any upfront fee or deposit, such as an initial arrangement fee, an arrangement fee, any periodic or management or administrative fee, any cancellation fee and any other costs incurred under the contract;
 - (c) a narrative explaining the type of fee applied, how the fee is calculated and to what it applies;
 - (d) the duration or estimated duration of the contract;
 - (e) the total cost of the *firm's* service over the duration or estimated duration of the contract; and
 - (f) *monthly* or other periodic payments made to *lenders*;

[Note: paragraphs 3.45cde of DMG]

- (9) maintain adequate records relating to each *debt management plan* which the *firm* has administered for the *customer* until the contract between the *customer* and the *firm* is completed or terminated;

[Note: paragraph 3.45i of DMG]

- (10) check the accuracy of the details of the *customer's* accounts; and

[Note: paragraph 3.45j of DMG]

- (11) use reasonable endeavours not to send inaccurate information to *lenders*.

[Note: paragraph 3.45j of DMG]

8.8.2

G

- (1) Evidence that there may have been a material change in a *customer's* financial circumstances is likely to include where a *customer* who has not previously missed payments under a *debt management plan* misses such payments.

[Note: paragraph 3.45ci of DMG]

- (2) Where the *firm* informs a *customer* of the outcome of a review of a *debt management plan*, it should seek to discuss with the *customer* any changes to the plan or to the *firm's* service at the earliest reasonably opportunity.

[Note: paragraph 3.45ciii of *DMG*]

- (3) In ■ CONC 8.8.1R (6) correspondence or documentation relating to material developments would include, for example, the issue or threat of issue of default notices or legal proceedings.

[Note: paragraph 3.45b of *DMG*]

8.9 Lead generators: including firm responsibility in dealing with lead generators

8.9.1 **G** The *Principles* (in particular *Principle 6* and *Principle 7*) apply to actions of a *firm* dealing with a *customer* who has been referred to it through a *lead generator*. For example, where a *firm* acts on a sales lead and knows or ought to know that the *lead generator* is using misleading information, advice or actions to obtain a *customer's* personal data is likely to amount to a breach by the *firm* of *Principle 6* and *Principle 7*.

8.9.2 **R** A *firm* must take reasonable steps before entering into an agreement to accept sales leads from a *lead generator* for *debt counselling* or *debt adjusting* or *providing credit information services* to ensure:

- (1) that any of the *lead generator's* advice, any content of its website and advertising and any of its commercial practices comply with applicable legal requirements, including the Consumer Protection from Unfair Trading Regulations 2008;
- (2) that the *lead generator* is registered with the Information Commissioner's Office under *data protection legislation*; and
- (3) that the *lead generator* has processes in place to ensure it complies with that Act and with the Privacy and Electronic Communications (EC Directive) Regulations 2003.

[Note: paragraph 3.9 of *DMG*]

8.9.3 **G** The steps required to satisfy the requirement in **■ CONC 8.9.2 R** should depend upon the regularity with which the *firm* intends to accept sales leads from the *lead generator*. If sales leads provided by a *lead generator* are likely to be on a single or occasional basis, less rigorous checks should be required than for a specialist sales *lead generator*.

[Note: paragraph 3.9 (box) of *DMG*]

8.9.4 **R** A *firm* must take reasonable steps, where it has agreed to accept sales leads from a *lead generator* for *debt counselling* or *debt adjusting* or *providing credit information services*, to ensure that the *lead generator*:

- (1) where it does not have a *Part 4A permission* for *debt counselling* and is not an *appointed representative* of a *firm* with such *permission*,

does not carry on *debt counselling* in obtaining or passing on sales leads to the *firm*;

(2) where it carries on *debt counselling*, has and continues to have a *Part 4A permission* for *debt counselling* or is an *appointed representative* of a *firm* with such *permission*;

(3) where it does not have a *Part 4A permission* covering the relevant activity, does not claim to or imply that it provides *debt counselling* or *debt adjusting* or that it is *providing credit information services*;

[Note: paragraph 3.12 of *DMG*]

(4) complies with applicable legal requirements, including the Consumer Protection from Unfair Trading Regulations 2008 in relation to any of its advice, any content of its website, any of its advertising and any of its commercial practices;

[Note: paragraph 3.9a *DMG*]

(5) makes the true nature of its services clear to *customers*, through any means of communication or promotion it uses;

[Note: paragraph 3.12 of *DMG*]

(6) where it seeks a *customer's* personal data to pass on to a *firm* for a fee, it makes clear to the *customer* that the *customer's* personal data will be passed on to the *firm*;

[Note: paragraph 3.12c of *DMG*]

(7) makes clear to a *customer* any financial interest it has in passing on a sales lead to the *firm*;

[Note: paragraph 3.12d of *DMG*]

(8) makes clear, if asked by a *customer*, the nature of its relationship with the *firm*;

[Note: paragraph 3.12e of *DMG*]

(9) does not falsely claim or imply in any way that it is or represents a charitable or *not-for-profit body* or government or local government organisation;

[Note: paragraph 3.12f of *DMG*]

(10) communicates with customers consistent with, and promotes, services the *firm* is able to provide;

[Note: paragraph 3.12h of *DMG*]

(11) complies with the Privacy and Electronic Communications (EC Directive) Regulations 2003 and *data protection legislation*;

[Note: paragraph 3.11 of *DMG*]

(12) does not send, or cause to be sent, an *electronic communication* to a *customer* (C) unless C has previously notified the *lead generator* that C consents for the time being to such communications being sent or caused to be sent by the *lead generator*;

[Note: paragraph 3.12j of DMG]

(13) does not make or cause to be made by means of an automated calling system (which is capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system, and transmitting sounds which are not live speech for reception by *persons* at some or all of the destinations so called) a call to a *customer* (C), unless C has previously notified the caller that for the time being C consents to such communications being made by or caused to be made by the caller on the line in question; and

[Note: paragraph 3.12j of DMG]

(14) enables *customers* to cancel using a clear and easy method their consent to be called or sent any communication.

[Note: paragraph 3.12m of DMG]

[Note: paragraphs 3.7 and 3.8 of DMG]

Guidance for firms

8.9.5 **G** The FCA would expect *firms* that agree with *lead generators* to accept sales leads in relation to *debt counselling* or *debt adjusting* to be able to identify, upon request, all the *lead generators* from which they have received leads (with the FCA authorisation number, where applicable).

8.9.6 **G** Claiming or implying a *person* is or represents, for example, a charitable organisation is likely to include operating a website which looks like, or is designed to look like, the website of such an organisation.

8.9.7 **G** In complying with **CONC 8.9.4 R** a *firm* that agrees with a *lead generator* to accept sale leads should:

- (1) check with the Information Commissioner’s Office that the *lead generator* is appropriately registered under *data protection legislation*; and
- (2) check the *lead generator’s* Privacy and Electronic Communications (EC Directive) Regulations 2003 process documentation.



8.10 Conduct of business: providing credit information services

Application

8.10.1

R

This section applies to:

- (1) a *firm* with respect to *providing credit information services* in relation to information relevant to the financial standing of an *individual*;
- (2) a *firm* with respect to the activities set out in article 36H(3)(e) to (h) of the *Regulated Activities Order* (Operating an electronic system in relation to lending) in relation to a *borrower* under a *P2P agreement*.

Conduct

8.10.2

G

The *Principles* apply to a *firm* with respect to *providing credit information services*. A *firm* providing such services should, for example, set out clearly in any communication to a *customer* the extent of the service it is able to offer.

[Note: paragraph 3.46 of *DMG*]

8.10.3

R

A *firm* must not:

- (1) claim to be able to remove negative but accurate information from a *customer's* credit file, including entries concerning adverse credit information and court judgments; or

[Note: paragraph 3.47ai of *DMG*]

- (2) mislead a *customer* about the length of time that negative information is held on the *customer's* credit file or any official register; or

[Note: paragraph 3.47aii of *DMG*]

- (3) claim that a new credit file can be created, such as by the *customer* changing address.

[Note: paragraph 3.47aiii of *DMG*]

8.10.4

G

It is likely to be a contravention of the *Principles*, for example *Principles 6* and *Principle 7*, where a *firm*:

- (1) claims in a communication to a *customer* to be able to remove negative but accurate entries from a *customer's* credit file, but where the *customer* enquires about this service the *customer* is offered instead the *firm's* service as a *lender* or a *credit broker*; or
- (2) fails to inform a *customer* that a *credit reference agency* will not respond to the *firm* taking steps in relation to the *customer's* credit file and will only send the *customer's* credit file to the *customer*.

[Note: paragraphs 3.47cd of DMG]

Chapter 10

Prudential rules for debt management firms



10.1 Application and purpose

Application

10.1.1

R

This chapter applies to:

- (1) a *debt management firm*; and
- (2) a *not-for-profit debt advice body* that, at any point in the last 12 *months*, has held £1 million or more in *client money* or as the case may be, projects that it will hold £1 million or more in *client money* at any point in the next 12 *months*.

Application: professional firms

10.1.2

R

- (1) This chapter does not apply to an *authorised professional firm*:
 - (a) whose main business is the practice of its profession; and
 - (b) whose *regulated activities* covered by this chapter are incidental to its main business.
- (2) A *firm's* main business is the practice of its profession if the proportion of income it derives from professional fees is, during its annual accounting period, at least 50% of the *firm's* total income (a temporary variation of not more than 5% may be disregarded for this purpose).
- (3) Professional fees are fees, commissions and other receipts receivable in respect of legal, accountancy, conveyancing and surveying services provided to clients but excluding any items receivable in respect of *regulated activities*.

Purpose

10.1.3

G

This chapter builds on the *threshold condition* referred to at **COND 2.4** (Appropriate resources) by providing that a *firm* must meet, on a continuing basis, a basic solvency requirement. This chapter also builds on *Principle 4* which requires a *firm* to maintain adequate financial resources by setting out prudential requirements for a *firm* according to what type of *firm* it is.

10.1.4

G

Prudential standards have an important role in minimising the risk of harm to *customers* by ensuring that a *firm* behaves prudently in monitoring and managing business and financial risks.

- 10.1.5 **G** More generally, having adequate prudential resources gives the *firm* a degree of resilience and some indication to *customers* of creditworthiness, substance and the commitment of its owners. Prudential standards aim to ensure that a *firm* has prudential resources which can provide cover for operational and compliance failures and pay redress, as well as reducing the possibility of a shortfall in funds and providing a cushion against disruption if the *firm* ceases to trade.
- 10.1.6 **R** A contravention of the *rules* in this chapter does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

10.2 Prudential resources requirements

General solvency requirement

- 10.2.1 **R** A *firm* must, at all times, ensure that it is able to meet its liabilities as they fall due.

General prudential resource requirement

- 10.2.2 **R** A *firm* must ensure that, at all times, its prudential resources are not less than its prudential resources requirement.

Prudential resources: relevant accounting principles

- 10.2.3 **R** A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its annual financial statements unless a *rule* requires otherwise.

Prudential resources requirement: firms carrying on other regulated activities

- 10.2.4 **R** The prudential resources requirement for a *firm* carrying on a *regulated activity* or activities in addition to those covered by this chapter, is the higher of:

- (1) the requirement which is applied by this chapter; and
- (2) the prudential resources requirement which is applied by another *rule* or requirement to the *firm*.

Prudential resources requirement

- 10.2.5 **R** On its *accounting reference date* in each year, a *firm* must calculate:
- (1) the total value of its *relevant debts under management* outstanding on that date; and
 - (2) the sum of:
 - (a) 0.25% of the first £5 million of that total value;
 - (b) 0.15% of the next £95 million of that total value; and
 - (c) 0.05% of any remaining total value.

- 10.2.6** **R** The total value of a *firm's relevant debts under management* outstanding referred to in **■ CONC 10.2.5 R (1)** is the sum of all the *firm's customers' relevant debts under management*.
- 10.2.7** **G** The definition of *relevant debts under management* refers to a debt due under a *credit agreement* or a *consumer hire agreement* in relation to which the *firm* is carrying on *debt adjusting* or an activity connected to that activity. The reference to "debt due" covers not only amounts that are payable at the time the prudential resources requirement is calculated but also amounts the *borrower* or *hirer* is presently obliged to pay under the *credit agreement* or the *consumer hire agreement* in the future.
- 10.2.8** **R** The prudential resources requirement for a *firm* to which this chapter applies is the higher of:
- (1) £5,000; or
 - (2) the sum calculated in accordance with **■ CONC 10.2.5 R (2)**;
- for the period until (subject to **■ CONC 10.2.13 R**) its next *accounting reference date*.
- 10.2.9** **R** To determine a *firm's* prudential resources requirement for the period beginning on the date on which it obtains *Part 4A permission* and ending on the day before its next *accounting reference date*, the *firm* must carry out the calculation in **■ CONC 10.2.5 R (2)** on the basis of the total value of *relevant debts under management* the *firm* projects will be outstanding on the day before its next *accounting reference date*.
- What is not included as relevant debts under management**
- 10.2.10** **G** Activities carried on by a *person* acting as an insolvency practitioner (within section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989) or by a *person* acting in reasonable contemplation of that *person's* appointment as an insolvency practitioner are excluded from the *regulated activity of debt adjusting*. A debt in relation to which a *person* is acting in such a capacity is, therefore, excluded from the calculation of its *relevant debts under management* (but a debt in relation to which the same *person* is not acting in such capacity and is carrying on *debt-adjusting* is included in the calculation).
- Determining the prudential resources requirement**
- 10.2.11** **G** If a *firm* has 1000 *relevant debts under management* and each of those debts is £10,000, the total value of the *firm's relevant debts under management* is £10,000,000. If the *firm* does not carry on any other *regulated activity* to which another higher prudential resources requirement applies, its prudential resources requirement is £20,000. This is calculated as follows:
- (1) $0.25\% \times £5,000,000 = £12,500$; and
 - (2) $0.15\% \times £5,000,000 = £7,500$.

10.2.12 **G** If during the following year 20% (£200) of each *relevant debt under management* is paid off by the *borrower* or *hirer* leaving an outstanding balance of £800 on each *relevant debt under management*, and during that year the *firm* does not carry on *debt adjusting* in relation to any further debts due under *credit agreements* or *consumer hire agreements*, the total value of the *firm's relevant debt under management* is £8,000,000. If the *firm* does not carry on any other *regulated activity* to which another higher prudential resources requirement applies, its prudential resources requirement is £17,000. This is calculated as follows:

(1) $0.25\% \times £5,000,000 = £12,500$; and

(2) $0.15\% \times £3,000,000 = £4,500$.

Recalculating the prudential resources requirement

10.2.13 **R** If a *firm* experiences a greater than 15% increase in the total value of its *relevant debts under management* compared to the value used in its last prudential resources requirement calculation, it must recalculate its prudential resources requirement using the new total value of its *relevant debts under management*.

10.2.14 **R** A *firm* must notify the *FCA* of any change in its prudential resources requirement within 14 *days* of that change.



10.3 Calculation of prudential resources

- 10.3.1** **R** (1) A *firm* must calculate its prudential resources only from the items which are eligible to contribute to a *firm's* prudential resources (see ■ CONC 10.3.2 R).
- (2) In arriving at its calculation of its prudential resources a *firm* must deduct certain items (see ■ CONC 10.3.3 R).

10.3.2 **R** Table: Items which are eligible to contribute to the prudential resources of a firm

Item	Additional explanation
1 Share capital	This must be fully paid and may include: <ul style="list-style-type: none"> (1) ordinary <i>share</i> capital; or (2) preference <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within two years).
2 Capital other than <i>share</i> capital (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i>)	The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account. The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i> : <ul style="list-style-type: none"> (1) capital account, that is the account: <ul style="list-style-type: none"> (a) into which capital contributed by the <i>partners</i> is paid; and (b) from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if: <ul style="list-style-type: none"> (i) he ceases to be a <i>partner</i> and an equal amount is transferred to another such account by his former <i>partners</i> or any <i>person</i> replacing him as their <i>partner</i>; or (ii) he ceases to be a partner and an equal amount is transferred to another such account by his former partners or any person replacing him as their partner; or (iii) the partnership is otherwise dissolved or wound up; and (2) current accounts according to the most recent financial statement. <p>For the purpose of the calculation of capital resources in respect of a <i>defined benefit occupational pension scheme</i>:</p>

		<ul style="list-style-type: none"> (1) a <i>firm</i> must derecognise any <i>defined benefit asset</i>; (2) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.
3	Reserves (Note 1)	<p>These are, subject to Note 1, the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i>.</p> <p>For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:</p> <ul style="list-style-type: none"> (1) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category; (2) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost; (3) in respect of a <i>defined benefit occupational pension scheme</i>: <ul style="list-style-type: none"> (a) a <i>firm</i> must derecognise any <i>defined benefit asset</i>; (b) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.
4	Interim net profits (Note 1)	If a <i>firm</i> seeks to include interim net profits in the calculation of its capital resources, the profits have, subject to Note 1, to be verified by the <i>firm's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.
5	Revaluation reserves	
6	Subordinated loans/debt	Subordinated loans/debts must be included in capital on the basis of the provisions in this chapter that apply to subordinated loans/debts.
	Note:	
1	Reserves	Reserves must be audited and interim net profits, general and collective provisions must be verified by the <i>firm's</i> external auditor unless the <i>firm</i> is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemptions from audit)) or, where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts.

10.3.3



Table: Items which must be deducted in arriving at prudential resources

1	<i>Investments</i> in own <i>shares</i>
2	<i>Investments</i> in <i>subsidiaries</i> (Note 1)
3	Intangible assets (Note 2)

4	Interim net losses (Note 3)
5	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 3)
Notes	<p>1 <i>Investments</i> in <i>subsidiaries</i> are the full balance sheet value.</p> <p>2 Intangible assets are the full balance sheet value of goodwill, capitalised development costs, brand names, trademarks and similar rights and licences.</p> <p>3 The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the period following the date as at which the capital resources are being computed.</p>

[**Note:** Until 31 March 2017, transitional provisions apply to ■ CONC 10.3.3 R: see ■ CONC TP 5.1]

Subordinated loans/debt

10.3.4

R

A subordinated loan/debt must not form part of the prudential resources of the *firm* unless it meets the following conditions:

- (1) it has an original maturity of:
 - (a) at least five years; or
 - (b) it is subject to five years' notice of repayment;
- (2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
- (3) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding up of the *firm*;
- (4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated loan/debt must be limited to petitioning for the winding up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;
- (5) the subordinated loan/debt must not become due and payable before its stated final maturity date, except on an event of default complying with (3);
- (6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
- (7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the *firm* against subordinated amounts owed to them by the *firm*;
- (8) the terms of the subordinated loan/debt must be set out in a written agreement that contains terms that provide for the conditions set out in this *rule*; and
- (9) the loan/debt must be unsecured and fully paid up.

10.3.5

R

When calculating its prudential resources, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

a - b

where:

a = Items 1 - 5 in the Table of items which are eligible to contribute to a *firm's* prudential resources (see CONC 10.3.2 R)

b = Items 1 - 5 in the Table of items which must be deducted in arriving at a *firm's* prudential resources (see CONC 10.3.3 R)

[Note: Until 31 March 2017, transitional provisions apply to ■ CONC 10.3.5 R: see ■ CONCTP 5.2]

10.3.6

G

■ CONC 10.3.5 R can be illustrated by the examples set out below:

(1) Share Capital	£20,000
Reserves	£30,000
Subordinated loans/debts	£10,000
Intangible assets	£10,000

As subordinated loans/debts (£10,000) are less than the total of share capital + reserves - intangible assets (£40,000) the *firm* need not exclude any of its subordinated loans/debts pursuant to CONC 10.3.5 R. Therefore total prudential resources will be £50,000.

(2) Share Capital	£20,000
Reserves	£30,000
Subordinated loans/debts	£60,000
Intangible assets	£10,000

As subordinated loans/debts (£60,000) exceed the total of share capital + reserves - intangible assets (£40,000) by £20,000, the *firm* should exclude £20,000 of its subordinated loans/debts when calculating its prudential resources. Therefore total prudential resources will be £80,000.

[Note: Until 31 March 2017, transitional provisions apply to ■ CONC 10.3.6 G: see ■ CONCTP 5.3]

Chapter 11

Cancellation

11.1 The right to cancel

11.1.1 **R** Except as provided for in **■ CONC 11.1.2 R** or where **■ PROF 5.4.1 R (1)** or **■ PROF 5.4.1 R (2)** applies, a *consumer* has a right to cancel a *distance contract* without penalty and without giving any reason, within 14 calendar days where that contract is:

- (1) a *credit agreement*;
- (2) an agreement between a *consumer* and a *firm* the subject matter of which comprises or relates to *credit broking, debt counselling, debt adjusting, providing credit information services or providing credit references*, other than an agreement that relates to any of those activities in relation to a *consumer hire agreement*.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to distance contracts that are consumer credit agreements]

11.1.2 **R**

- (1) For a *credit agreement* there is no right to cancel under **■ CONC 11.1.1 R**, unless (2) or (3) applies, in respect of:
 - (a) a regulated consumer credit agreement (within the meaning of that section) to which section 66A (right to withdraw) of the CCA applies;
 - (b) a *credit agreement* under which a *lender* provides *credit* to a *consumer* and where the *consumer's* obligation to repay is secured by a legal mortgage on *land*;
 - (c) a *credit agreement* cancelled under regulation 15(1) of the Consumer Protection (Distance Selling) Regulations 2000 (automatic cancellation of a related credit agreement) or under regulation 38 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (effects of withdrawal or cancellation on ancillary contracts);
 - (d) a *credit agreement* cancelled under regulation 23 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (automatic termination of credit agreement); and
 - (e) a *restricted-use credit agreement* to finance the purchase of *land* or an existing building, or an agreement for a bridging loan in connection with the purchase of *land* or an existing building.
- (2) There is a right to cancel under **■ CONC 11.1.1 R** where the *lender* has not complied with **■ CONC 2.7.6 R** (requirement to communicate terms and conditions etc), unless the *distance contract* falls with the exception in **■ CONC 2.7.12 R** and the *firm* has complied with the requirements of that *rule*.

(3) There is a right to cancel under ■ CONC 11.1.1 R where the circumstances in ■ CONC 2.7.12 R apply but the *lender* has not supplied all the contractual terms and conditions and information as required in ■ CONC 2.7.12 R.

(4) In the case of a *distance contract* comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the right to cancel under ■ CONC 11.1.1 R applies only to the initial service agreement.

[Note: article 1(2) of the *Distance Marketing Directive*]

(5) In this *rule*:

- (a) “initial service agreement” includes the opening of a bank account or the making of a *credit-token agreement*; and
- (b) “operations” includes the deposit or withdrawal of funds to or from a bank account and payments by a credit card or store card.

11.1.3

G

Section 66A of the CCA (right to withdraw) does not apply to an agreement for *credit* exceeding £60,260 (unless the agreement is a *residential renovation agreement*), an agreement secured on *land*, a *restricted-use credit agreement* to finance the purchase of *land* or an agreement for a bridging loan in connection with the purchase of *land*. Section 67 of the CCA (cancellable agreements) applies to *regulated credit agreements* (apart from agreements secured on *land*, *restricted-use credit agreements* to finance the purchase of *land* or agreements for a bridging loan in connection with the purchase of *land* and agreements covered by section 66A) and *consumer hire agreements* (to which this section does not apply) in the circumstances specified in the section. A *customer* with a right to cancel under section 67 of the CCA may choose to cancel the agreement under that section or under ■ CONC 11.1.1 R.

11.1.4

G

A *firm* may provide longer or additional cancellation rights voluntarily but, if it does, these should be on terms at least as favourable to the *customer* as those in this chapter, unless the differences are clearly explained.

Beginning of cancellation period

11.1.5

R

The cancellation period begins:

- (1) either from the day the *distance contract* is made; or
- (2) from the day on which the *consumer* receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under ■ CONC 2.7.6 R or under ■ CONC 2.7.12 R, if that is later than the date referred to in (1) above.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to distance contracts]

Disclosing the right to cancel

- 11.1.6 **R** (1) The *firm* must disclose to a *consumer* in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract to which the right to cancel applies under **CONC 11.1.1 R**, and in a *durable medium*, the existence of the right to cancel, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which the notification of cancellation should be sent.
- (2) This *rule* applies only where a *consumer* would not otherwise receive the information in (1) under a *rule* in this sourcebook from the *firm* (such as under **CONC 2.7.2 R** to **CONC 2.7.5 R** (the distance marketing disclosure rules)).

Exercising the right to cancel

- 11.1.7 **R** If a *consumer* exercises the right to cancel the *consumer* must, before the expiry of the cancellation period, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a *durable medium* available and accessible to the recipient, is dispatched before the cancellation period expires.

[Note: article 6(6) of the *Distance Marketing Directive* for distance contracts]

- 11.1.8 **G** The *firm* should accept any indication that the *consumer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as the date when the notification was dispatched.

Record keeping

- 11.1.9 **R** The *firm* must make adequate records concerning the exercise of a right to cancel and retain them for at least three years.

Effects of cancellation

- 11.1.10 **R** By exercising a right to cancel, a *consumer* withdraws from the contract and the contract is terminated.

- 11.1.11 **R** (1) When a *consumer* exercises the right to cancel the *consumer* may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The amount payable must not:
 - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;
 - (b) in any case be such that it could be construed as a penalty.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to distance contracts]

(2) The *firm* may not require a *consumer* to pay any amount on the basis of this *rule* unless it can prove that the *consumer* was duly informed about the amount payable and, in conformity with the distance marketing disclosure *rules* (■ CONC 2.7.2 R to ■ CONC 2.7.5 R). However, in no case may the *firm* require such payment if it has commenced the performance of the contract before expiry of the cancellation period without the *consumer's* prior request.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to distance contracts]

Firm's obligations on cancellation

11.1.12 **R** The *firm* must, without undue delay and within 30 calendar days, return to the *consumer* any sums it has received from the *consumer* except for any amount that the *consumer* may be required to pay under ■ CONC 11.1.11 R. This period begins from the day on which the *firm* receives the notification of cancellation.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to distance contracts]

Consumer's obligations on cancellation

11.1.13 **R** The *firm* is entitled to receive from the *consumer* any sums or property the *consumer* has received from the *firm* without any undue delay and no later than within 30 calendar days. This period begins from the day on which the *consumer* dispatches the notification of cancellation.

[**Note:** article 7(5) of the *Distance Marketing Directive* in relation to distance contracts]

11.1.14 **R** Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

11.2 Right of withdrawal: P2P agreements

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 11.2: see ■ CONC TP 4.6]

Application

- 11.2.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement*.
- 11.2.2 **R** This section does not apply to a *P2P agreement* under which *credit* exceeding £60,260 is, was or would be provided unless the agreement is a *residential renovation agreement*.

Right to cancel

- 11.2.3 **R** A *firm* must ensure that a *P2P agreement* that the *firm* makes available to a *borrower* and a *lender* provides for the following contractual rights and obligations and procedure for and effect of the exercise of those rights and obligations:
- (1) a right for the *borrower*:
 - (a) to withdraw from the agreement ("the right of withdrawal");
 - (b) without giving any reason; and
 - (c) by giving oral or written notice of the withdrawal to the *firm* (on behalf of the *lender*) before the end of the period of 14 days:
 - (i) beginning with the day after the *P2P agreement* is made; or
 - (ii) beginning with the day on which the *borrower* receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under ■ CONC 4.3, if that is later than the date in (1);
 - (2) where written notice is given of the right of withdrawal by *electronic means*:
 - (a) it may be sent to the number or electronic address specified for the purpose in the agreement; and
 - (b) where it is so sent, it is to be regarded as having been received by the *firm* (on behalf of the *lender*) at the time it is sent;
 - (3) where written notice is given of the right of withdrawal, other than by *electronic means*:

- (a) it may be sent by post to, or left at, the postal address specified for the purpose in the agreement; and
 - (b) where it is sent by post to that address, it is to be regarded as having been received by the *firm* (on behalf of the *lender*) at the time of posting;
- (4) where the *borrower* exercises the right of withdrawal from a *P2P agreement*:
- (a) the *borrower* must repay to the *firm* (on behalf of the *lender*) or the *lender* any *credit* provided and the interest accrued on it (at the rate provided for under the agreement); but
 - (b) the *borrower* is not liable to pay to the *firm* (on behalf of the *lender*) or the *lender* any compensation, fees or charges, except any non-returnable charges paid by the *lender* or by the *firm* (on behalf of the *lender*) to a public administrative body;
- (5) the effect of exercising the right to withdraw is that the obligations of the *borrower* under the agreement cease to have effect except for the obligation in (4); and
- (6) where an amount is payable where (4) applies, the agreement may provide that the amount must be paid without undue delay and no later than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period the agreement may provide that the sum may be recovered from the *borrower* as a debt).

11.2.4

R

A *firm* must ensure that a *P2P agreement* that it makes available to a *lender* and a *borrower* does not provide for any other obligations of the *borrower* in connection with the exercise of the rights in ■ CONC 11.2.3 R.

Chapter 12

Requirements for firms with interim permission for credit-related regulated activities



12.1 Application and purpose

12.1.1 **R** This chapter applies to a *firm* with an *interim permission*.

12.1.2 **G** The purpose of these *rules* is to provide that certain provisions of the *Handbook* or of a Regulatory Guide:

- (1) that would otherwise apply to *persons* with an *interim permission* are not to apply; or
- (2) are to apply to those *persons* with the modifications specified in the table in **■ CONC 12.1.4 R**.

Disapplication or modification of certain modules or provisions of the Handbook

12.1.3 **R** The modules or parts of the modules of the *appropriate regulator's Handbook of rules* and guidance or of a Regulatory Guide listed in the table in **■ CONC 12.1.4 R** to this chapter:

- (1) do not apply, to the extent set out in the table, to a *person* with an *interim permission* with respect to the carrying on of a *credit-related regulated activity* or *operating an electronic system in relation to lending*; or
- (2) are to apply to such a *person* with respect to the carrying on of a *credit-related regulated activity* or *operating an electronic system in relation to lending* with the modifications specified in the table in **■ CONC 12.1.4 R**.

12.1.4 **R** Table: Disapplied or modified modules or provisions of the Handbook

Module	Disapplication or modification
Senior Management Arrangements, Systems and Control sourcebook (SYSC)	SYSC 6.1.4CR (requirement of debt management firm or credit repair firm to appoint a compliance officer) does not apply to a <i>firm</i> with an <i>interim permission</i> .
[FCA]	SYSC 6.3.8 R (responsibility for anti-money laundering systems and controls) does not apply to a <i>firm</i> with only an <i>interim permission</i> .
	SYSC 6.3.9 R (requirement to appoint a money laundering reporting officer) does not apply to a <i>firm</i> with only an <i>interim permission</i> .

Module	Disapplication or modification
Fees manual (FEES) [FCA]	The Fees manual does not apply in respect of the fee provided for in FEES 8.1.1R (1), except for the rules and guidance in FEES 2.3 and FEES 8.1.
Threshold Conditions (COND)	<p>Guidance applies with necessary modifications to reflect Chapter 4 of Part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (see Note 1).</p> <p>Note 1 A firm is treated as having an <i>interim permission</i> on and after 1 April 2014 to carry on <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> under the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 if it met the conditions set out in Chapter 4 of Part 8 of that Order. Section 55B(3) of the Act (satisfaction of threshold conditions) does not require the FCA or PRA to ensure that the firm will satisfy, and continue to satisfy, in relation to the <i>credit-related regulated activities</i> or <i>operating an electronic system in relation to lending</i> for which it has an <i>interim permission</i>, the <i>threshold conditions</i> for which that regulator is responsible. The FCA or PRA can, however, exercise its power under section 55J of the Act (variation or cancellation on initiative of regulator) or under section 55L of the Act (in the case of the FCA) or section 55M of the Act (in the case of the PRA) (imposition of requirements by the regulator) in relation to a firm if, among other things, it appears to the FCA or PRA that the firm is failing, or is likely to fail, to satisfy the <i>threshold conditions</i> in relation to the <i>credit-related regulated activities</i> or <i>operating an electronic system in relation to lending</i> for which it has an <i>interim permission</i> for which the regulator is responsible. The guidance in COND should be read accordingly.</p>
Client Assets (CASS)	<p>CASS does not apply with respect to <i>credit-related regulated activity</i> to a firm with:</p> <p>(1) only an <i>interim permission</i>; or</p> <p>(2) an <i>interim permission</i> that is treated as a variation of permission;</p> <p>if the firm acts in accordance with the provisions of paragraphs 3.42 and 3.43 of the Debt management (and credit repair services) guidance (OFT366rev) previously issued by the Office of Fair Trading, as they were in effect immediately before 1 April 2014.</p>
Supervision manual (SUP)	SUP 3 (Auditors), SUP 10A (FCA Approved persons), SUP 10C (FCA senior managers regime for approved persons in SMCR firms) and SUP 12 (Appointed representatives) (see Note 2) do not apply:

Module	Disapplication or modification
	<p>(1) to a <i>firm</i> with only an <i>interim permission</i>; or</p> <p>(2) with respect to a <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> for which a <i>firm</i> has an <i>interim permission</i> that is treated as a variation of permission,</p> <p>except that SUP 3.10 and SUP 3.11 apply to a <i>firm</i> in relation to its <i>designated investment business</i> that comprises <i>operating an electronic system in relation to lending</i>.</p> <p>Note 2 A <i>firm</i> may not be a <i>principal</i> in relation to a <i>regulated activity</i> for which it has <i>interim permission</i>. A <i>firm</i> with <i>interim permission</i> may, however, be an <i>appointed representative</i> in relation to a <i>regulated activity</i> which it does not have <i>interim permission</i> to carry on (article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).</p> <p>SUP 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements) applies:</p> <p>(1) with necessary modifications to reflect Chapter 4 of Part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (see Note 3);</p> <p>(2) with the modifications to SUP 6.3.15D and SUP 6.4.5D set out in paragraph 1.2 of this Schedule.</p> <p>Note 3 If a <i>firm</i> with <i>interim permission</i> applies to the appropriate regulator under section 55A of the Act for <i>Part 4A permission</i> to carry on a <i>regulated activity</i> or under section 55H or 55I of the Act to vary a <i>Part 4A permission</i> that the <i>firm</i> has otherwise than by virtue of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 by adding a <i>regulated activity</i> to those to which the <i>permission</i> relates, the application may be treated by the appropriate regulator as relating also to some or all of the <i>regulated activities</i> for which the <i>firm</i> has <i>interim permission</i>.</p> <p>SUP 11 (Controllers and close links) does not apply to a <i>firm</i> with only an <i>interim permission</i> (see Note 4).</p> <p>Note 4 A <i>firm</i> is not to be regarded as an <i>authorised person</i> for the purposes of Part 12 of the Act (control over authorised person) if it has only an <i>interim permission</i> (see article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).</p> <p>For a <i>firm</i> with only an <i>interim permission</i></p> <p>(1) SUP 15.5.1 R, SUP 15.5.2 G, SUP 15.5.4 R, SUP 15.5.5 R are modified so that the words "reasonable advance", "and the date on which the <i>firm</i> intends to implement</p>

Module	Disapplication or modification
	<p>the change of name" and "and the date of the change" are omitted; and</p> <p>(2) SUP 15.7.1 R, SUP 15.7.4 R and SUP 15.7.5A R are modified so that a notification of a change in name, address or telephone number must be made using the online Consumer Credit Interim Permissions system available on the FCA's website.</p> <p>(3) If in a notification to the FCA the firm is required to enter its FRN number it must include its interim permission number.</p> <p>SUP 16 (Reporting requirements) does not apply to a firm with only an interim permission except for SUP 16.14.</p> <p>SUP 16.11 and SUP 16.12 apply to a firm, which was an authorised person immediately before 1 April 2014, with an interim permission that is treated as a variation of permission with respect to credit-related regulated activity or operating an electronic system in relation to lending as if the changes to SUP 16.11 and SUP 16.12 effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made.</p>
<p>Disputes Resolution: Complaints sourcebook (DISP)</p>	<p>DISP 1.10 (Complaints reporting rules) and DISP 1.10A (Complaints data publication rules) do not apply to a person with only an interim permission.</p> <p>DISP 1.10 (Complaints reporting rules) and DISP 1.10A (Complaints data publication rules) apply to a firm, which was an authorised person immediately before 1 April 2014, with an interim permission that is treated as a variation of permission with respect to credit-related regulated activity or operating an electronic system in relation to lending as if the changes to DISP 1.10 and DISP 1.10A effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made.</p>
<p>Consumer Credit sourcebook (CONC)</p>	<p>CONC 10 (Prudential requirements for debt management firms) does not apply:</p> <p>(1) to a firm with only an interim permission; or</p> <p>(2) with respect to credit-related regulated activity or operating an electronic system in relation to lending for which a firm has an interim permission that is treated as a variation of permission.</p>
<p>Perimeter Guidance manual (PERG)</p>	<p>For a firm only with an interim permission, PERG 5.11.13 G is modified so that following the words "which does not otherwise consist of carrying on regulated activities" is added "(other than a regulated activity carried on by a firm only with an interim permission listed in article 59A of the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(No.2) Order 2013 (SI 2013/1881) which is to be disregarded for this purpose)".</p> <p>Article 59A enables a firm with only an interim permission which would be able to benefit from article 72B of</p>

Module	Disapplication or modification
	the <i>Regulated Activities Order</i> , but for carrying on the new consumer credit regulated activities to continue to do so.

Interpretation

12.1.5

R

In this section 12.1, the expression "interim permission" means a permission which a *person* is to be treated as having under article 56(9)(a) or (b) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013.

Chapter 13

Guidance on the duty to give information under sections 77, 78 and 79 of the Consumer Credit Act 1974

13.1 Application

13.1.1 **G** This chapter:

- (1) applies to a *firm* with respect to *consumer credit lending* and a *firm* with respect to *consumer hiring*;
- (2) does not apply to the obligation in or under section 78(4), (4A) or (5) of the CCA on a *lender* to give regular statements where *running-account credit* is provided under a *regulated credit agreement*.

Guidance

- 13.1.2 **G**
- (1) The *FCA* takes the view that sections 77, 78 and 79 of the CCA should be read in a way that allows the *borrower* or *hirer* to obtain the information needed in order to be properly informed without imposing unnecessary burden on *firms*.
 - (2) The statement referred to in the relevant section must be prepared according to the information to which it is 'practicable' for the *firm* to refer. In the *FCA*'s view, this means practicable at the time of the request and includes information which can reasonably be obtained from third parties.
 - (3) *Firms* should take steps to ensure that information is preserved and kept available to be used to give information to a *borrower* or *hirer*.

The request and the duty to give

- 13.1.3 **G**
- (1) A request must be from or on behalf of the *borrower* under sections 77 and 78 or from or on behalf of a *hirer* under section 79. This would include a friend or relative, a solicitor, a claims management company or other third party. Under *data protection legislation*, the *lender* or *owner* is not allowed to reveal such information to a third party without the authority of the *borrower* or *hirer*. It should therefore satisfy itself that the *person* making the request has proper authority to obtain the information. If a copy of such authority is not enclosed with the request, the *lender* or *owner* is entitled to reply by asking to see the authority.
 - (2) Where there are two or more *borrowers* or *hirers* and the request comes from one only, it must be nevertheless complied with, and the response must be given to both (or all) *borrowers* or *hirers*.

- (3) If the recipient considers that another *person* is the *lender* or *owner*, the recipient should either inform the applicant of who it considers is the correct recipient or pass the request on to that *person*.
- (4) In accordance with the sections referred to in (1) the *firm* must 'give' a copy of the executed agreement and any other document referred to in it and the required statement. In the *FCA's* view, sending a copy of them by ordinary second class post will suffice. Guidance on what constitutes a copy is given below and found in the case of *Carey v HSBC Bank plc* [2009] EWHC 3417 (QB).
- (5) The duty under the relevant section does not apply if no sum is, or will or may become, payable by the *borrower* or *hirer* under the agreement. This is irrespective of whether the agreement may have been terminated.

The copy agreement

13.1.4

G

- (1) The copy of the executed agreement should be a 'true copy' of the original. However, as confirmed in the case of *Carey v HSBC Bank plc* [2009] EWHC 3417 (QB), in this context the term 'true copy' does not necessarily mean a carbon, photocopy, microfiche copy or other exact copy of the signed agreement. There is no obligation to provide a copy which includes a copy of the signature.
- (2) The *firm* can reconstitute a copy. It can do this by re-populating a template of the relevant agreement form with the details of the specific agreement taken from its records. If the *firm* does provide a reconstituted copy, it should explain that that is what it has done, to avoid misleading the *customer* that this is a contemporaneous copy.
- (3) The terms and conditions should be those applicable at the time the agreement was executed. The name and address at the time of execution must be included.
- (4) The reconstituted agreement should contain a heading prescribed by the *CCA* and any relevant cancellation notice.
- (5) If the reason why no copy is given in response to a request under these sections is that there never was an executed agreement, the *firm* should acknowledge this in its response.
- (6) If the agreement has been varied, the duty is to provide not only a copy of the agreement as originally executed but also either:
 - (a) a copy of the latest variation given in accordance with section 82(1) of the *CCA* relating to each discrete term of the agreement which has been varied; or,
 - (b) a clear statement of the terms of the agreement as varied.
- (7) Further, section 180(1)(b) of the *CCA* and regulation 3(2) of the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 expressly allow certain matters to be omitted from the copy. There may be excluded from the copy of the executed agreement to be provided under these sections:
 - (a) any information relating to the *borrower*, *hirer* or surety, or information included for the use of the *lender* or *owner* only,

which is not required to be included by the CCA or by any regulations made under the CCA as to the form and content of the agreement;

- (b) any signature box, signature or date of signature;
- (c) in the case of *pawn* agreements, any description of the article taken in *pawn*.

The statement of account

13.1.5

G

If the *firm* possesses insufficient information to enable it to ascertain the amount and date of any sum which is to become payable, it is sufficient to indicate the basis on which they would fall to be ascertained.

Failure to comply

13.1.6

G

- (1) Failure to comply with the provisions means that the agreement becomes unenforceable while the failure to comply persists, and the courts have no discretion to allow enforcement.
- (2) In such cases, a *firm* should in no way, either by act or omission, mislead a *customer* as to the enforceability of the agreement.
- (3) In particular, a *firm* should not in such cases either threaten court action or other enforcement of the debt or imply that the debt is enforceable when it is not.
- (4) The *firm* should, in any request for payment or communication relating to a payment (other than a statement issued in accordance with the CCA or regulations made under it which does not constitute or contain a request for payment) in such cases, make clear to the *customer* that although the debt remains outstanding it is unenforceable.
- (5) In the judgment of *McGuffick -v- The Royal Bank of Scotland plc* [2009] EWHC 2386 (Comm) Flaux J held in a case under section 77 of the CCA that passing details of a debt to a *credit reference agency* and related activities do not constitute enforcement under the CCA. He also held that steps taken with a view to enforcement, including demanding payment from a claimant, issuing a default notice, threatening legal action and the actual bringing of proceedings, are not themselves 'enforcement' under the CCA. On the other hand he confirmed that the actions listed under sections 76(1) and 87(1) of the CCA did amount to enforcement notwithstanding that some of the actions 'less obviously' amounted to enforcement. These actions are demanding earlier payment, recovering possession of *goods or land*, treating any right conferred on the debtor by the agreement as terminated, restricted or deferred, enforcing any *security* and terminating the agreement.
- (6) While Flaux J agreed with the decision of HHJ Simon Brown QC (sitting as a Deputy High Court Judge) in *Tesco Personal Finance v Rankine* [2009] C.C.L.R. 3 that commencing proceedings was not enforcement, but a step taken with a view to enforcement, both he and HHJ Simon Brown appear to have been drawing a distinction between commencing proceedings and entering judgment in those proceedings.
- (7) This *guidance* deals only with the question of whether an agreement is unenforceable in relation to sections 77, 78 and 79 of the CCA. A

lender's rights to enforce an agreement may be restricted for a variety of reasons, by the *Act*, by or under the *CCA* and by virtue of the general law.

- (8) However, where a *firm* is aware that an agreement is unenforceable because of non-compliance with an information request under section 77, 78 or 79 of the *CCA*, a *firm* should make it clear when communicating to a *customer* about a debt that the debt is in fact unenforceable. Failure to do so, in that case, would in the *FCA's* view unfairly mislead the *customer* by omission. Any communication that implies expressly or otherwise that a debt is enforceable when it is known that it is not, would be misleading. One way to avoid this would be for the *firm* to explain to the *customer* the full meaning of 'unenforceable'.

Chapter 14

Requirement in relation to agents



14.1 Application

14.1.1 **R** This chapter applies to a *firm* with respect to a *credit-related regulated activity*.

Requirements

14.1.2 **R** A *firm* must not appoint an individual, who is not an *authorised person* or an *exempt person*, to act as an agent of the *firm*, in carrying on *regulated activities* of the *firm* unless all of the following conditions are met at the date of the individual's appointment and while the individual continues to act as the *firm's* agent:

- (1) the *firm* appoints the individual as the *firm's* agent;
- (2) the individual works as agent only for the *firm* and not as agent for any other principal;
- (3) the *firm* has a written contract with the individual which:
 - (a) sets out effective measures for the *firm* to control the individual's activities when acting on its behalf in the course of its business; and
 - (b) requires the individual to make clear to *customers* that the individual is representing the *firm* as the individual's principal and the name of the *firm*;
- (4) (in the case of collecting debts) receipt of repayments by the individual is treated as receipt by the *firm*; and
- (5) the *firm* accepts full responsibility for the conduct of the individual when the individual is acting on the *firm's* behalf in the course of the *firm's* business.

14.1.3 **G**

- (1) A *firm* in **CONC 14.1.2 R** would need to have a *Part 4A permission* for every activity the individual carries on as its agent for which the *firm* would need permission if it were carrying on the activity itself.
- (2) **CONC 14** uses the expression "individual" in its natural meaning as referring to a single human being.

14.1.4 **R** Where a *firm* appoints an agent in accordance with **CONC 14.1.2 R** to carry on the business of the *firm*:

- (1) the *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the agent with the *firm's* obligations under the *regulatory system*; and
- (2) the *firm* must take all reasonable steps to identify conflicts of interest between the agent and a *client* of the *firm* that arise or may arise in the course of the *firm* carrying on *regulated activities* or *ancillary activities*.

Chapter 15

Agreements secured on land



15.1 Application

- 15.1.1** **R** This chapter applies to:
- (1) a *firm* with respect to *consumer credit lending* in relation to *regulated credit agreements secured on land*; and
 - (2) a *firm* with respect to *credit broking* in relation to *credit agreements secured on land*.
- 15.1.2** **G** *Firms* which carry on *consumer credit lending* or *credit broking* should comply with all *rules* which apply to that *regulated activity* in *CONC* and other parts of the *Handbook*. For example, **CONC 7** applies to matters concerning arrears, default and recovery (including repossession) and applies generally, including to agreements to which this chapter applies. This chapter sets out specific additional requirements and *guidance* that apply in relation to *credit agreements secured on land* (see **CONC 1.2.7G**). Certain arranging and introducing activities in relation to investment property loans (as defined by article 61A of the *Regulated Activities Order*), *regulated mortgage contracts* and *home purchase plans* are excluded, to the extent specified in article 36E of the *Regulated Activities Order*, from *credit broking*.
- Conduct**
.....
- 15.1.3** **G** The financial promotion *rules* in **CONC 3** apply to *firms' financial promotions* concerning *credit agreements secured on land*, apart from the extent to which a *financial promotion* or communication concerns *qualifying credit*. **CONC 3.3.1 R** requires *financial promotions* to be clear fair and not misleading; *firms* should take particular care with respect to explaining the nature of the *credit* to be provided and the costs of borrowing.
- 15.1.4** **R** A *firm* must make clear in advance the purpose of any visit off trade premises (which has the same meaning as in section 48 of the *CCA*) at which the *customer* may enter into a *regulated credit agreement*.
- 15.1.5** **R** In good time before a *credit agreement* is made and, where section 58 applies, before an unexecuted agreement is sent to the *customer* for signature a *firm* must:
- (1) disclose key contract terms and conditions of the prospective *credit agreement*;

- (2) disclose any features of the prospective *credit agreement* which carry a particular risk to the *customer*;
- (3) inform the *customer* of the consequences of missing payments or of making underpayments, including the imposition of default charges, the risk of repossession of the *customer's* home, in relation to the *customer's* credit record and of inability to obtain *credit* in the future;
- (4) inform the *customer* about the circumstances in which the rates or charges may change, in particular, if they may be varied at the discretion of the *firm* or can vary subject to a reference rate of interest; and
- (5) if the rate of interest can vary subject to a reference rate of interest, other than that of the Bank of England's base rate, inform the *customer* of the reference rate in question and the rate to be applied.

15.1.6 **G** Where appropriate, the disclosure required by **CONC 15.1.5 R** should be explained orally to the *customer*.

15.1.7 **R** Where a *firm* has reasonable grounds to suspect that the *customer* does not understand material aspects of the obligations they will take on and the resulting risks, under a *regulated credit agreement*, the *firm*:

- (1) must not enter into a *regulated credit agreement*; and
- (2) must provide further explanation of any such obligations or risks.

15.1.8 **R** Before a *customer* enters into a *regulated credit agreement*, the *firm* must:

- (1) encourage the *customer* to read all contractual documentation carefully;
- (2) take reasonable steps to ensure the *customer* has understood the nature of the obligations the *customer* will take on and the resulting risks;
- (3) encourage the *customer* to obtain independent advice; and
- (4) permit the *customer* an adequate opportunity to seek and obtain such advice.

15.1.9 **G** Before a *regulated credit agreement* secured on *land* is entered into:

- (1) the *firm* should consider the adequate explanations it should give to the *customer* under **CONC 4.2**; and

[Note: paragraph 3.1 (box) of *ILG*]

15.1.10

G

In accordance with PRIN 9 (customer: relationships of trust):

(2) the *firm* is required under ■ CONC 5.2A to carry out a *creditworthiness assessment*.

[Note: paragraphs 1.14 and 4.1 of *ILG*]

(1) a *firm* must take reasonable steps to ensure the suitability of its advice, which would include acting in the best interests of a *customer* where the *firm* makes a recommendation;

(2) if it appears to the *firm* that entering into a *regulated credit agreement* secured on *land* is not in the best interests of the *customer*, that fact should be made clear to the *customer*; and

(3) the *firm* should encourage the *customer* to consider whether the *credit* can be afforded, including in the event the *customer's* circumstances change, for example, through a change in employment or retirement.

15.1.11

R

A *firm* must set out the nature and purpose of the fees and charges payable by the *customer*, including any fees or charges payable on the *customer's* default:

(1) in the *credit agreement*; and

(2) in any booklet or leaflet relating to the agreement.

15.1.12

R

Where rates and charges under a *credit agreement* are variable, a *firm* must:

(1) before entering into the agreement, explain to the *customer* the consequences of such variations on the amount of periodic instalments payable and on the *total amount payable*;

(2) only increase rates or charges to recover genuine increases in costs of the *firm* which have an effect on the *credit* provided under the agreement; and

(3) explain to the *customer* before changing any rate or charge under the agreement.

15.1.13 **R** Where a *customer* wishes to make repayments ahead of time:

(1) a *firm's* charges for early repayment must be fair and reasonable and must reflect the *firm's* necessary costs in relation to such repayment;

(2) the *firm* must fully explain the process and costs involved in early repayment; and

(3) the *firm* must allow the *customer* to make part early repayment of the capital.

15.1.14 **G** [deleted]

15.1.15 **R** If a shortfall remains following the sale of a property, the *firm* must notify the *customer* as soon as possible of the amount of the shortfall.

Appendix 1

Total charge for credit rules; and certain exemptions

1.1 Total charge for credit rules for certain agreements secured on land

Interpretation

- App 1.1.1** **R** (1) For the purposes of this section, references to the period for which credit is provided:
- (a) in the case of a *credit agreement* under which the period for which *credit* is to be provided is ascertainable at the date of the making of the *credit agreement*, are references to the period beginning with the *relevant date* and ending with the end of the period for which *credit* is to be provided;
 - (b) in the case of a *credit agreement* under which the period for which *credit* is to be provided can be ascertained at the *relevant date* if the assumption in **■ CONC App 1.1.12 R** is applied, are references to the period beginning with the *relevant date* and ending with the end of the period for which *credit* would be provided under the *credit agreement* if the amount given by that assumption were the amount of the *credit* so provided; and
 - (c) in any other case, are references to the period of one year referred to in **■ CONC App 1.1.13 R**.
- (2) References in this section to repayment of the *credit* under a *credit agreement* and of the *total charge for credit* include references to any repayment or payment, as the case may require, of any part of the *credit* and of the *total charge for credit*.

Application

- App 1.1.2** **R** This section applies to *regulated credit agreements* which are secured on *land* or to prospective *regulated credit agreements* which are to be secured on *land*, except to the extent that the Consumer Credit (Disclosure of Information) Regulations 2010 apply to such agreements.

General provisions about calculation

App 1.1.3 R

- (1) Any calculation under this section shall be made on the following assumptions
- (a) the assumption that the *borrower* will not be entitled to any income tax relief relating to the *transaction* other than relief under section 19 of the Income and Corporation Taxes Act 1970 and Schedule 4 to the Finance Act 1976 (which afford relief in respect of premiums under certain policies of insurance) without any deduction under section 21 of the said Act of 1970;
 - (b) the assumption that no assistance is given under the Home Purchase Assistance and Housing Corporation Guarantee Act 1978;
 - (c) (i) in the case of a *transaction* which provides for repayment of the *credit* or of the *total charge for credit* at, or not later than, a specified time or times, the assumption that the *lender* will not exercise any right under the *transaction* to require repayment at any other time or times;
 - (ii) in any other case, the assumption that the *lender* will not exercise any right under the *transaction* to require repayment;

the *borrower*, in any case, performing all his obligations under the *transaction*;
 - (d) subject to (e) below, in the case of a *transaction* which provides for variation of the rate or amount of any item included in the *total charge for credit* in consequence of the occurrence after the *relevant date* of any event, the assumption that the event will not occur; and, in this sub-paragraph, "event" means an act or omission of the *borrower* or of the *lender* or any other event (including where the *transaction* makes provision for variation upon the continuation of any circumstance, the continuation of that circumstance) but does not include an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the *credit agreement*; and
 - (e) in the case of a *land-related agreement* which provides for the possibility of any variation of the rate of interest in consequence of the occurrence after the *relevant date* of any event (being an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the *credit agreement*), the assumption that such a variation will, when the event occurs, take place.
- (2) For the purposes of this section
- (a) subject to (b) below and ■ CONC App 1.1.18 R, in the case of any *credit agreement* each provision of *credit* and each repayment of the *credit* and of the *total charge for credit* shall be taken to be made:
 - (i) at the earliest time provided under the *transaction*, and
 - (ii) in a case where any such provision or repayment is to be made at or not later than a specified time, at that time

and, where any such repayment is to be made before the *relevant date*, it shall be taken to be made on the *relevant date*;
 - (b) where under a *credit agreement* for *running-account credit* or a *credit agreement* for *fixed-sum credit* where the *credit* is not repayable at specified intervals or in specified amounts a constant *period rate of*

charge in respect of periods of equal or of nearly equal length is charged, it shall be assumed for the purposes of calculations under this section, notwithstanding ■ CONC App 1.1.17 R, that

- (i) the amount of *credit* outstanding at the beginning of a period is to remain outstanding throughout the period;
 - (ii) the amount of any *credit* provided during a period is provided immediately after the end of the period; and
 - (iii) any repayment of *credit* or of the *total charge for credit* made during a period is made immediately after the end of the period; and
- (c) the assumption that the amount of any repayment of *credit* or of the *total charge for credit* will, at the time when the repayment is made, be the smallest for which the agreement provides.
- (3) In determining the amount of the total of the interest on the *credit* which may be provided under the *credit agreement*, any subsidy receivable by any *person* under Part II of the Housing Subsidies Act 1967 shall be deducted.

Total charge for credit

App 1.1.4 ■ For the purposes of the *Regulated Activities Order*, the total charge for the *credit* which may be provided under an actual or prospective *credit agreement* shall be the total of the amounts determined as at the date of the making of the *credit agreement* of such of the charges specified in ■ CONC App 1.1.5 R as apply in relation to the *credit agreement* but excluding the amount of the charges specified in ■ CONC App 1.1.6 R.

Items included in total charge for credit

App 1.1.5 ■ Except as provided in ■ CONC App 1.1.6 R, the amounts of the following charges are included in the *total charge for credit* in relation to a *credit agreement*:

- (a) the total of the interest on the *credit* which may be provided under the *credit agreement*;
- (b) other charges at any time payable under the *transaction* by or on behalf of the *borrower* or a *relative* of his whether to the *lender* or any other *person*; and
- (c) a premium under a *contract of insurance*, payable under the *transaction* by the *borrower* or a *relative* of his, where the making or maintenance of the *contract of insurance* is required by the *lender*
 - (i) as a condition of making the *credit agreement*, and
 - (ii) for the sole purpose of ensuring complete or partial repayment of the *credit*, and complete or partial payment to the *lender* of such of those charges included in the *total charge for credit* as are payable to him under the *transaction*, in the event of the death, invalidity, illness or unemployment of the *borrower*,

notwithstanding that the whole or part of the charge may be repayable at any time or that the consideration therefor may include matters not within the *transaction* or subsisting at a time not within the duration of the *credit agreement*.

Items excluded from total charge for credit

App 1.1.6 R

- (1) The amounts of the following items are not included in the *total charge for credit* in relation to a *credit agreement*:
- (a) any charge payable under the *transaction* to the *lender* upon failure by the *borrower* or a *relative* of his to do or to refrain from doing anything which he is required to do or to refrain from doing, as the case may be;
 - (b) any charge
 - (i) which is payable by the *lender* to any *person* upon failure by the *borrower* or a *relative* of his to do or to refrain from doing anything which he is required under the *transaction* to do or to refrain from doing, as the case may be, and
 - (ii) which the *lender* may under the *transaction* require the *borrower* or a *relative* of his to pay to him or to another *person* on his behalf;
 - (c) any charge relating to a *credit agreement* which is a *credit agreement* to *finance* a transaction of a description referred to in (2)(a) or (b) of the definition of *restricted-use credit agreement*, being a charge which would be payable if the transaction were for *cash*;
 - (d) any charge (other than a fee or commission charged by a *credit broker*) not within (c) above
 - (i) of a description which relates to services or benefits incidental to the *credit agreement* and also to other services or benefits which may be supplied to the *borrower*, and
 - (ii) which is payable pursuant to an obligation incurred by the *borrower* under arrangements effected before he applies to enter into the *credit agreement*, not being arrangements under which the *borrower* is bound to enter into any *credit agreement*;
 - (e) subject to (2) below, any charge under arrangements for the care, maintenance or protection of any *land* or *goods*;
 - (f) charges for money transmission services relating to an arrangement for a *current account*, being charges which vary with the use made by the *borrower* of the arrangement;
 - (g) any charge for a guarantee other than a guarantee
 - (i) which is required by the *lender* as a condition of making the *credit agreement*, and
 - (ii) the purpose of which is to ensure complete or partial repayment of the *credit*, and complete or partial payment to the *lender* of such of those charges included in the *total charge for credit* as are payable to him under the *transaction*, in the event of the death, invalidity, illness or unemployment of the *borrower*;
 - (h) charges for the transfer of funds (other than charges within (f) above) and charges for keeping an account intended to receive payments towards the repayment of the *credit* and the payment of interest and other charges, except where the *borrower* does not have reasonable freedom of choice in the matter and where such charges are abnormally high; but this sub-paragraph does not exclude from the *total charge for credit* charges for collection of the payments to which it refers, whether such payments are made in *cash* or otherwise;

- (i) a premium under a *contract of insurance* other than a *contract of insurance* referred to in ■ CONC App 1.1.5R (c).
- (2) (1) above has effect only
 - (a) in the case of a charge within (e), where, in pursuance of the arrangements
 - (i) the services are to be performed if, after the date of the making of the *credit agreement*, the condition of the *land* or *goods* becomes, or is in immediate danger of becoming, such that the *land* or *goods* cannot reasonably be enjoyed or used, and
 - (ii) the charge will not accrue unless the services are performed; and
 - (b) in the case of any other charge within (e)
 - (i) where provision of substantially the same description as that to which the arrangements relate is available under comparable arrangements from a *person* who is not the *lender* or a *supplier* or a *credit broker* who introduced the *borrower* and the *lender*, and
 - (ii) where the arrangements are made with a *person* chosen by the *borrower*, and
 - (iii) if, in accordance with the *transaction*, the consent of the *lender* or of a *supplier* or of the *credit broker* who introduced the *borrower* and the *lender* is required to the making of the arrangements, where the *transaction* provides that such consent may not be unreasonably withheld whether because no incidental benefit will or may accrue to the *lender* or to the *supplier* or to the *credit broker* or on any other ground;

and references in this sub-paragraph to the *lender*, a *supplier* and a *credit broker* include references to his near relative, his partner and a member of a group of which he is a member, to any *person* nominated by him or any such person in relation to the arrangements, and to a near relative of his partner; and "near relative" means, in relation to any *person*, the husband, wife, father, mother, brother, sister, son or daughter of that person and "group" means the *person* (including a company) having control of a company together with all the companies directly or indirectly controlled by him.

Rate of total charge for credit

App 1.1.7 R The rate of the *total charge for credit* in the case of an actual or prospective *credit agreement* shall be the *annual percentage rate of charge* determined in accordance with the following provisions of ■ CONC App 1.1.8 R to ■ CONC App 1.1.10 R and (where it has more than one decimal place) rounded to one decimal place in accordance with ■ CONC App 1.1.8 R.

App 1.1.8 R The *annual percentage rate of charge* referred to in ■ CONC App 1.1.7 R shall be rounded to one decimal place as follows

- (a) where the figure at the second decimal place is greater than or equal to 5, the figure at the first decimal place shall be increased by one and the decimal place (or places) following the first decimal place shall be disregarded; and

- (b) where the figure at the second decimal place is less than 5, that decimal place and any decimal places following it shall be disregarded.

App 1.1.9 R

- (1) Subject to (4) below, the *annual percentage rate of charge* is the rate for *i* which satisfies the equation set out in (2) below, expressed as a percentage.
- (2) The equation referred to in (1) above is

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^{t_K}} = \sum_{K'=1}^{K'=m'} \frac{A'_{K'}}{(1+i)^{t_{K'}}$$

where

K is the number identifying a particular advance of *credit*;

K' is the number identifying a particular instalment;

A_K is the amount of advance *K*;

A'_{K'} is the amount of instalment *K'*;

Σ represents the sum of all the terms indicated;

m is the number of advances of *credit*;

m' is the total number of instalments;

t_K is the interval, expressed in years, between the *relevant date* and the date of the second advance and those of any subsequent advances number three to *m*;

and

t_{K'} is the interval, expressed in years, between the *relevant date* and the dates of instalments numbered one to *m'*.

- (3) In (2) above, references to instalments are references to any payment made by, or on behalf of, the *borrower* or a *relative* of his which comprises
- (a) a repayment of all or part of the *credit* under the *credit agreement*;
 - (b) a payment of all or part of the *total charge for credit*; or
 - (c) both a repayment of all or part of the *credit* and a payment of all or part of the *total charge for credit*.
- (4) Where more than one rate is given under (1) above, the *annual percentage rate of charge* is the positive rate nearest to zero or, if no positive rate is so given, the negative rate nearest to zero.

Computation of time

App 1.1.10 R

- (1) This rule has effect for determining the length of any period for the purposes of calculations under ■ CONC App 1.1.7 R to ■ CONC App 1.1.9 R.
- (2) A period which is not a whole number of calendar months or a whole number of weeks shall be counted in years and days.
- (3) Subject to (4) below, a period which is a whole number of calendar months or a whole number of weeks shall be counted in calendar months or in weeks, as the case may be.

- (4) Where a period is both a whole number of calendar months and a whole number of weeks and
 - (a) one repayment only is to be made, the period shall be counted in calendar months, or
 - (b) more than one repayment is to be made
 - (i) if all such repayments are to be made at intervals from the *relevant date* of one or more weeks, the period shall be counted in weeks, and
 - (ii) in any other case, the period shall be counted in calendar months.
- (5) A period which is to be counted
 - (a) in calendar months shall be taken to be of a length equal to the relevant number of twelfth parts of a year, and
 - (b) in weeks, shall be taken to be of a length equal to the relevant number of fifty-second parts of a year.
- (6) A day may be taken to be either
 - (a) one three hundred and sixty-fifth part of a year or, if it is a leap year, one three hundred and sixty-sixth part of a year; or
 - (b) $\frac{1}{365.25}$

of a year.
- (7) Every day shall be taken to be a working day.

Assumptions for calculations

- App 1.1.11 R** (1) The provisions of ■ CONC App 1.1.11 R to ■ CONC App 1.1.18 R shall have effect as the case may require for the purpose of the calculation of the *total charge for credit* under ■ CONC App 1.1.4 R to ■ CONC App 1.1.6 R above and of the rate of such charge under ■ CONC App 1.1.7 R to ■ CONC App 1.1.10 R above in relation to any actual or prospective *credit agreement* in respect of matters necessary for the calculation which cannot be ascertained by the *lender* at the date of the making of the *credit agreement*.
- (2) In a case where apart from this paragraph ■ CONC App 1.1.12 R and one or more other provisions of ■ CONC App 1.1.11 R to ■ CONC App 1.1.18 R would fall to be applied, the said ■ CONC App 1.1.12 R shall be applied first.

Assumption about the amount of credit

- App 1.1.12 R** Where the amount of the *credit* to be provided under the *credit agreement* cannot be ascertained at the date of the making of the *credit agreement*,
- (a) in the case of a *credit agreement for running-account credit* under which there is a *credit limit*, that amount shall be taken to be such *credit limit*; and
 - (b) in any other case, that amount shall be taken to be £100.

Assumption about period for which credit is provided

App 1.1.13 R Where the period for which *credit* is to be provided is not ascertainable at the date of the making of the *credit agreement*, it shall be assumed that *credit* is provided for one year beginning with the *relevant date*.

Assumption about index-linked rates and amounts

App 1.1.14 R Subject to ■ CONC App 1.1.15 R, where the rate or amount of any item included in the *total charge for credit* or the amount of any repayment of *credit* under a *transaction* falls to be ascertained thereunder by reference to the level of any index or other factor in accordance with any formula specified therein, the rate or amount, as the case may be, shall be taken to be the rate or amount so ascertained, the formula being applied as if the level of such index or other factor subsisting at the date of the making of the *credit agreement* were that subsisting at the date by reference to which the formula is to be applied.

Assumptions about variations of interest rates in land-related agreements

App 1.1.15 R (1) This rule applies to any *land-related agreement* which provides for the possibility of any variation of the rate of interest if it is to be assumed, by virtue of ■ CONC App 1.1.3R (1)(e), that the variation will take place but the amount of the variation cannot be ascertained at the date of the making of the *credit agreement*.

(2) In this rule

"initial standard variable rate"	means	
	(a)	the standard variable rate of interest which would be applied by the <i>lender</i> to the <i>credit agreement</i> on the date of the making of the <i>credit agreement</i> if the <i>credit agreement</i> provided for interest to be paid at the <i>lender's</i> standard variable rate with effect from that date, or
	(b)	if there is no such rate, the standard variable rate of interest applied by the <i>lender</i> on the date of the making of the <i>credit agreement</i> in question to other <i>land-related agreements</i> or, where there is more than one such rate, the highest such rate,
		taking no account (for the avoidance of doubt) of any discount or other reduction to which the <i>borrower</i> would or might be entitled; and

“varied rate” means any rate of interest charged when a variation of the rate of interest is to be assumed to take place by virtue of CONC App 1.1.3R (1)(e).

- (3) Where a *land-related agreement* provides a formula for calculating a varied rate by reference to a standard variable rate of interest applied by the *lender*, or any other fluctuating rate of interest, but does not enable the varied rate to be ascertained at the date of the making of the *credit agreement* because it is not known on that date what the standard variable rate will be or (as the case may be) at what level the fluctuating rate will be fixed when the varied rate falls to be calculated, it shall be assumed that that rate or level will be the same as the initial standard variable rate.
- (4) Where a *land-related agreement* provides for the possibility of any variation in the rate of interest (other than a variation referred to in (3) above) which it is to be assumed, by virtue of ■ CONC App 1.1.3R (1)(e) will take place but does not enable the amount of that variation to be ascertained at the date of the making of the *credit agreement*, it shall be assumed that the varied rate will be the same as the initial standard variable rate.

Assumption about changes in charges.....

App 1.1.16 **R** Where

- (a) the period for which the *credit* or any part thereof is to be or may be provided cannot be ascertained at the date of the making of the *credit agreement*; and
- (b) the rate or amount of any item included in the *total charge for credit* will change at a time provided in the *transaction* within one year beginning with the *relevant date*,

the rate or amount shall be taken to be the highest rate or amount at any time obtaining under the *transaction* in that year.

Assumption about time of provision of credit.....

App 1.1.17 **R** Where the earliest date on which *credit* is to be provided cannot be ascertained at the date of the making of the *credit agreement*, it shall be assumed that *credit* is provided on that date.

Assumptions about time of payment of charges.....

App 1.1.18 **R** In the case of any *transaction* it shall be assumed

- (a) that a charge payable at a time which cannot be ascertained at the date of the making of the *credit agreement* shall be payable on the *relevant date* or, where it may reasonably be expected that a *borrower* will not make payment on that date, on the earliest date at which it may reasonably be expected that he will make payment; or
- (b) where more than one payment of a charge of the same description falls to be made at times which cannot be ascertained at the date of the making of the *credit agreement*, that the first such payment will be payable on the *relevant date* (or, where it may reasonably be expected that a *borrower* will not make payment on that date, at the earliest date on which it may

reasonably be expected that he will make payment), that the last such payment will be payable at the end of the period for which *credit* is provided and that all other such payments (if any) will be payable at equal intervals between such times,

as the case may require.

1.2 Total charge for credit rules for other agreements

Interpretation

- App 1.2.1** **R** (1) In this section
- (a) a reference to a rate of interest is a reference to the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of *credit* drawn down;
 - (b) a reference to an open-end *regulated credit agreement* is to a *regulated credit agreement* of no fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

Application

- App 1.2.2** **R** This section shall not apply to *regulated credit agreements* which are secured on *land* or to prospective *regulated credit agreements* which are to be secured on *land* except to the extent that the Consumer Credit (Disclosure of Information) Regulations 2010 apply to such agreements.

Total charge for credit

- App 1.2.3** **R** (1) The *total charge for credit* which may be provided under an actual or prospective *regulated credit agreement* shall be the *total cost of credit to the borrower* determined in accordance with the requirements in (2) to (5) below.
- (2) Subject to (3), the following costs shall be included in the *total cost of credit to the borrower*:
 - (-a) any fee or charge payable by the *borrower* to a *credit broker* in connection with the agreement (if the fee or charge is known to the *lender*);
 - (a) the costs of maintaining an account recording both payment transactions and drawdowns;
 - (b) the costs of using a means of payment for both payment transactions and drawdowns;
 - (c) other costs relating to payment transactions.
 - (3) The costs at (2) shall not be included in the *total cost of credit to the borrower* where

- (a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the *regulated credit agreement* or in any other agreement made with the *borrower*;
 - (b) in the case of an *overdraft facility* the costs do not relate to that facility.
- (4) Costs in respect of an ancillary service shall be included in the *total cost of credit to the borrower* if the conclusion of a service contract is compulsory in order to obtain the *credit* or to obtain it on the terms and conditions marketed.
- (5) The *total cost of credit to the borrower* shall not include
- (a) any charges payable by or on behalf of the *borrower* or a *relative* of his for non-compliance with his commitments contained in the *regulated credit agreement*;
 - (b) charges which, for purchases of *goods* or services, he or a *relative* of his is obliged to pay whether the transaction is effected in *cash* or on *credit*.
- (6) In (4), the reference to an ancillary service means a service that relates to the provision of *credit* under the *regulated credit agreement* and includes in particular an insurance or payment protection policy.
- (7) The *total cost of credit to the borrower* must not take account of any discount, reward (including 'cash back') or other benefit to which the *borrower* might be entitled, whether such an entitlement is subject to conditions or otherwise.

Total cost of credit

App 1.2.3A **G** The *total cost of credit to the borrower* includes fee or charge payable by the *borrower* to a *credit broker*, if the fee or charge is known to the *lender*.
 ■ CONC 4.4.2R(3) requires the *credit broker* to disclose their fee to the *lender*.
Lenders should take reasonable steps to ascertain whether a fee is payable to the *credit broker* and, if so, the amount of the fee.

Calculation of the annual percentage rate of charge

App 1.2.4 **R** The *annual percentage rate of charge* shall be calculated in accordance with the mathematical formula set out in ■ CONC App 1.2.6 R.

Assumptions for calculation

App 1.2.5 **R** For the purposes of calculating the *total charge for credit* and the *annual percentage rate of charge*:

- (a) it shall be assumed that the *regulated credit agreement* is to remain valid for the period agreed and that the *lender* and the *borrower* will fulfil their obligations under the terms and by the dates specified in that agreement;
- (b) in the case of a *regulated credit agreement* allowing variations in
 - (i) the rate of interest, or
 - (ii) where applicable, charges contained in the *annual percentage rate of charge*,

where these cannot be quantified at the time of calculation, it shall be assumed that they will remain at the initial level and will be applicable for the duration of the agreement;

- (c) where not all rates of interest are determined in the *regulated credit agreement*, a rate of interest shall, where necessary, be assumed to be fixed only for the partial periods for which the rate of interest is determined exclusively by a fixed specific percentage agreed when the agreement is made;
- (d) where different rates of interest and charges are to be offered for limited periods or amounts during the *regulated credit agreement*, the rate of interest and the charge shall, where necessary, be assumed to be at the highest level for the duration of the agreement;
- (e) where there is a fixed rate of interest agreed in relation to an initial period under a *regulated credit agreement*, at the end of which a new rate of interest is determined and subsequently periodically adjusted according to an agreed indicator, it shall, where necessary, be assumed that, at the end of the period of the fixed rate of interest, the rate of interest is the same as at the time of making the calculation, based on the value of the agreed indicator at that time;
- (f) where the *regulated credit agreement* gives the *borrower* freedom of drawdown, the *total amount of credit* shall, where necessary, be assumed to be drawn down immediately and in full;
- (fa) where the *regulated credit agreement* imposes, amongst the different ways of drawdown, a limitation with regard to the amount of *credit* and period of time, the amount of *credit* shall, where necessary, be assumed to be the maximum amount provided for in the agreement and to be drawn down on the earliest date provided for in the agreement;
- (g) where the *regulated credit agreement* provides different ways of drawdown with different charges or rates of interest, the *total amount of credit* shall, where necessary, be assumed to be drawn down at the highest charge and rate of interest applied to the most common drawdown mechanism for the *credit* product to which the agreement relates;
- (h) for the purposes of (g), the most common drawdown mechanism for a particular *credit* product shall be assessed on the basis of the volume of transactions for that product in the preceding 12 months, or expected volumes in the case of a new *credit* product;
- (i) in the case of an *overdraft facility*, the *total amount of credit* shall, where necessary, be assumed to be drawn down in full and for the entire duration of the *regulated credit agreement*;
- (j) for the purposes of (i), if the duration of the *overdraft facility* is not known, it shall, where necessary, be assumed that the duration of the facility is three months;
- (k) in the case of an open-end *regulated credit agreement*, other than an *overdraft facility*, it shall, where necessary, be assumed that the *credit* is provided for a period of one year starting from the date of the initial drawdown, and that the final payment made by the *borrower* clears the balance of capital, interest and other charges, if any;
- (l) for the purposes of (k):

- (i) the capital is repaid by the *borrower* in equal monthly payments, commencing one month after the date of initial drawdown;
 - (ii) in cases where the capital must be repaid in full and in cases where the capital may be taken in full by the lender exercising their rights under a *continuous payment authority*, in a single payment, within or after each payment period, successive drawdowns of the maximum amount and repayments of the entire capital by the *borrower* shall, where necessary, be assumed to occur over the period of one year;
 - (iii) interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the *regulated credit agreement*;
- (m) in the case of a *regulated credit agreement*, other than an *overdraft facility*, or an *open-end regulated credit agreement*:
- (i) where the date or amount of a repayment of capital to be made by the *borrower* cannot be ascertained, it shall, where necessary, be assumed that the repayment is made at the earliest date provided for under the *regulated credit agreement* and is for the lowest amount for which the *regulated credit agreement* provides;
 - (ii) where it is not known on which date the *regulated credit agreement* is made, the date of the initial drawdown shall, where necessary, be assumed to be the date which results in the shortest interval between that date and the date of the first payment to be made by the *borrower*;
- (n) where the date or amount of a payment to be made by the *borrower* cannot be ascertained on the basis of the *regulated credit agreement* or the assumptions set out in (i) to (m), it shall, where necessary, be assumed that the payment is made in accordance with the dates and conditions required by the *lender* and, when these are unknown:
- (i) interest charges are paid together with repayments of capital;
 - (ii) a non-interest charge expressed as a single sum is paid on the date of the making of the *regulated credit agreement*;
 - (iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall, where necessary, be assumed to be equal amounts;
 - (iv) the final payment clears the balance of capital, interest and other charges, if any;
- (o) in the case of an agreement for *running-account credit*, where the *credit limit* applicable to the *credit* is not yet known, that *credit limit* shall, where necessary, be assumed to be £1,200.

App 1.2.5A G The assumptions set out in ■ **CONC App 1.2.5R** are intended to ensure that the *total charge for credit* and the *annual percentage rate of charge* are calculated in a consistent way to promote the comparability of different offers. The use of the term ‘where necessary’ in assumptions (c) to (o) in that *rule* makes clear that these assumptions only apply where they are necessary in relation to the specific agreement, for example, where key features such as the amount or duration of *credit* are uncertain. In general, though, the *total charge for credit* and the *annual percentage rate of charge* calculation will depend on the terms of the individual *regulated credit agreement*.

Calculation of the Annual Percentage Rate of Charge

App 1.2.6 R

(1) The *annual percentage rate of charge* ("APR") is calculated by means of the equation in (2) which equates, on an annual basis, the total present value of drawdowns with the total present value of repayments and payments of charges.

(2) The equation referred to in (1) is

$$\sum_{k=1}^m C_k (1 + X)^{-tk} = \sum_{l=1}^{m'} D_l (1 + X)^{-sl}$$

where

X is the APR;

m is the number of the last drawdown;

k is the number of a drawdown, thus $1 \leq k \leq m$;

C_k is the amount of drawdown k;

t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$;

m' is the number of the last repayment or payment of charges;

l is the number of a repayment or payment of charges;

D_l is the amount of a repayment or payment of charges

S_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

(3) For the purposes of (2)

- (a) the amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals;
- (b) the starting date shall be that of the first drawdown;
- (c) intervals between dates used in the calculations shall be expressed in years or in fractions of a year;
- (d) a year is assumed to have 365 days (366 days for leap years), 52 weeks or 12 equal months;
- (e) an equal month is assumed to have 30.41666 days (365/12) regardless of whether or not it is a leap year;
- (f) the result of the calculation shall be expressed with an accuracy of at least one decimal place; if the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one;
- (g) the equation can be rewritten as set out in (h) using a single sum and the concept of flows (A_k), which will be positive or negative, either paid or received during periods l to k, expressed in years;
- (h) the equation referred to in (g) is

$$S = \sum_{k=1}^n A_k (1 + X)^{-t_k}$$

S being the present balance of flows; if the aim is to maintain the equivalence of flows, the value will be zero.

1.3 Exemption of certain credit agreements secured on land

Interpretation

App 1.3.1 R

(1) This section specifies:

- (a) the *persons* or classes of *persons* to whom the exemption in article 60E(2) of the *Regulated Activities Order* applies; and
- (b) the agreements or classes of agreement to which the exemption in article 60E(2) of the *Regulated Activities Order* applies.

Paragraphs (2) to (5) do not apply where the applicable agreement is an *MCD article 3(1)(b) credit agreement*.

(2) Where the *lender* is a body specified in ■ CONC App 1.3.2 R or an *authorised person with permission to accept deposits*, article 60E(2) of the *Regulated Activities Order* applies only to

- (a) a *borrower-lender-supplier agreement* falling within (a) or (c) of the definition of *relevant credit agreement relating to the purchase of land*;
- (b) a *borrower-lender agreement* secured by any *legal or equitable mortgage on land to finance*
 - (i) the purchase of *land*; or
 - (ii) the provision of dwellings or *business premises* on any *land*; or
 - (iii) subject to (3) below, the alteration, enlarging, repair or improvement of a dwelling or *business premises* on any *land*;
- (c) a *borrower-lender agreement* secured by any *legal or equitable mortgage on land to refinance* any existing indebtedness of the *borrower*, whether to the *lender* or another *person*, under any agreement by which the *borrower* was provided with *credit* for any of the purposes specified in (b)(i) to (iii) above.

(3) (2)(b)(iii) above applies only

- (a) where the *lender* is the *lender* under
 - (i) an agreement (whenever made) by which the *borrower* is provided with *credit* for any of the purposes specified in (2)(b)(i) and (2)(b)(ii); or

- (ii) an agreement (whenever made) refinancing an agreement under which the *borrower* is provided with *credit* for any of the said purposes,
being, in either case, an agreement relating to the *land* referred to in (2)(b)(iii) and secured by a *legal or equitable mortgage* on that *land*; or
- (b) where a *borrower-lender agreement* to *finance* the alteration, enlarging, repair or improvement of a dwelling, secured by a *legal or equitable mortgage* on that dwelling, is made as a result of any such services as are described in section 4(3)(e) of the Housing Associations Act 1985 which are certified as having been provided by
 - (i) a *local authority*;
 - (ii) a housing association within the meaning of section 1 of the Housing Associations Act 1985 or article 3 of the Housing (Northern Ireland) Order 1992;
 - (iii) a body established by such a housing association for the purpose of providing such services as are described in the said section 4(3)(e) of the Housing Associations Act 1985;
 - (iv) a charity;
 - (v) the National Home Improvement Council;
 - (vi) the Northern Ireland Housing Executive; or
 - (vii) a body, or a body of any description, that has been approved by the Secretary of State under section 169(4)(c) of the Local Government and Housing Act 1989 or the Department of the Environment for Northern Ireland under article 103(4)(c) of the Housing (Northern Ireland) Order 1992.
- (4) Where the *lender* is a body specified in ■ CONC App 1.3.3 R, the exemption in article 60E(2) of the *Regulated Activities Order* applies only to an agreement of a description specified in that rule in relation to that body and made pursuant to an enactment or for a purpose so specified.
- (5) Where the *lender* is a body specified in ■ CONC App 1.3.4 R, the exemption in article 60E (2) of the *Regulated Activities Order* applies only to an agreement of a description falling within ■ CONC App 1.3.1R (2)(a) to ■ CONC App 1.3.1R (2)(c), being an agreement advancing money on the security of a dwelling-house.

App 1.3.2 R

Bodies whose agreements of the specified description are exempt agreements

INSURANCE COMPANIES

- Abbey Life Assurance Company Limited
- Abbey Life Pension and Annuities Limited
- Albany Life Assurance Company Limited
- Allchurches Life Assurance Limited
- Alliance Assurance Company Limited
- Allied Dunbar Assurance PLC
- Ambassador Life Assurance Company Limited
- American Life Insurance Company
- Ansvar Insurance Company Limited

Bodies whose agreements of the specified description are exempt agreements

Atlas Assurance Company Limited
Australian Mutual Provident Society
Avon Insurance PLC
Black Horse Life Assurance Company Limited
Bradford Insurance Company Limited
Britannic Assurance Public Limited Company
The British & European Reinsurance Company Limited
British Equitable Assurance Company Limited
The British Life Office Limited
The British Oak Insurance Company Limited
British Reserve Insurance Company Limited
Caledonian Insurance Company
The Cambrian Insurance Company Limited
The Canada Life Assurance Company
Cannon Assurance Limited
Car and General Insurance Corporation Limited
City of Westminster Assurance Company Limited
City of Westminster Assurance Society Limited
Clerical, Medical and General Life Assurance Society
Colonial Life (UK) Limited
The Colonial Mutual Life Assurance Society Limited
Commercial Union Assurance Company plc
Commercial Union Pensions Management Limited
Commercial Union Life Assurance Company Limited
Confederation Life Insurance Company
The Contingency Insurance Company Limited
Co-operative Insurance Society Limited
Cornhill Insurance Public Limited Company
Criterion Insurance Company Limited
Crown Life Assurance Company Limited
Crown Life Insurance Company Limited
Crown Life Pensions Limited
Crusader Insurance PLC
The Dominion Insurance Company Limited
Eagle Star Insurance Company Limited
Ecclesiastical Insurance Office plc
Economic Insurance Company Limited
English & American Insurance Company Limited
The Equitable Life Assurance Society
Equico International Limited
Equity & Law Life Assurance Society plc
Essex and Suffolk Insurance Company Limited

Bodies whose agreements of the specified description are exempt agreements

Excess Insurance Company Limited
Federation Mutual Insurance Limited
Fine Art and General Insurance Company Limited
Friends' Provident Life Office
FS Assurance Limited
General Accident Fire and Life Assurance Corporation Public Limited Company
General Accident Life Assurance Limited
General Accident Linked Life Assurance Limited
General Portfolio Life Insurance Public Limited Company
Gisborne Life Assurance Company Limited
Gresham Life Assurance Society Limited
Guardian Assurance plc
Guardian Royal Exchange Assurance plc
Hill Samuel Life Assurance Limited
The Ideal Insurance Company Limited
The Imperial Life Assurance Company of Canada
Irish Life Assurance plc
The Iron Trades Employers Insurance Association Limited
Legal and General Assurance Society Limited
The Licenses and General Insurance Company Limited
The Life Association of Scotland Limited
London Aberdeen & Northern Mutual Assurance Society Limited
London and Manchester Assurance Company Limited
London and Manchester (Pensions) Limited
London & Scottish Assurance Corporation Limited
The London Assurance
The London Life Association Limited
The Manufacturers Life Insurance Company
Marine and General Mutual Life Assurance Society
Maritime Insurance Company Limited
Medical Sickness Annuity & Life Assurance Society Limited
The Mercantile and General Reinsurance Company plc
Midland Assurance Limited
The Motor Union Insurance Company Limited
Minister Insurance Company Limited
Municipal Life Assurance Limited
Municipal Mutual Insurance Limited
NALGO Insurance Association Limited
National Employers' Life Assurance Company Limited
National Employers' Mutual General Insurance Association Limited
The National Farmers Union Mutual Insurance Society Limited
National House-Building Council

Bodies whose agreements of the specified description are exempt agreements

The National Insurance and Guarantee Corporation PLC
The National Mutual Life Association of Australasia Limited
National Mutual Life Assurance Society
National Provident Institution
National Vulcan Engineering Insurance Group Limited
N.E.L. Pensions Limited
The New Zealand Insurance plc
North British & Mercantile Insurance Company Limited
The Northern Assurance Company Limited
Norwich Union Asset Management Limited
Norwich Union Fire Insurance Society Limited
Norwich Union Insurance Group (Pensions Management) Limited
Norwich Union Life Insurance Society
NRG London Reinsurance Company Limited
Oaklife Assurance Limited
The Ocean Accident & Guarantee Corporation Limited
The Orion Insurance Company P.L.C.
Pearl Assurance Public Limited Company
Pensions Management (SWF) Limited
Permanent Insurance Company Limited
Phoenix Assurance Public Limited Company
Pioneer Mutual Insurance Company Limited
Prolific Life and Pensions Limited
Property Growth Pensions & Annuities Limited
Provident Life Association Limited
Provident Mutual Life Assurance Association
Provincial Insurance Public Limited Company
The Prudential Assurance Company Limited
Railway Passengers Assurance Company
Refuge Assurance, public Limited company
Regency Life Assurance Company Limited
The Reliance Fire and Accident Insurance Corporation Limited
The Reliance Marine Insurance Company Limited
Reliance Mutual Insurance Society Limited
Royal Exchange Assurance
Royal Insurance Public Limited Company
Royal Insurance (Int.) Limited
Royal Insurance (U.K.) Limited
Royal Life Insurance Limited
Royal Life (Unit Linked Assurances) Limited
Royal Life (Unit Linked Pension Funds) Limited
The Royal London Mutual Insurance Society Limited

Bodies whose agreements of the specified description are exempt agreements

The Royal National Pension Fund for Nurses
Royal Reinsurance Company Limited
Schroder Life Assurance Limited
Scottish Amicable Life Assurance Society
Scottish Equitable Life Assurance Society
Scottish General Insurance Company Limited
Scottish Insurance Corporation Limited
The Scottish Life Assurance Company
The Scottish Mutual Assurance Society
The Scottish Provident Institution
Scottish Union and National Insurance Company
Scottish Widows' Fund and Life Assurance Society
Sentinel Life plc
Skandia Life Assurance Company Limited
Standard Life Assurance Company
Standard Life Pension Funds Limited
The State Assurance Company Limited
Suffolk Life Annuities Limited
Sun Alliance and London Assurance Company Limited
Sun Insurance Office Limited
Sun Life Assurance Company of Canada
Sun Life Assurance Society plc
Target Life Assurance Company Limited
Teachers Assurance Company Limited
Trident Investors Life Assurance Company Limited
Trident Life Assurance Company Limited
Trinity Insurance Company Limited
UK Life Assurance Company Limited
United British Insurance Company Limited
United Friendly Insurance plc
United Kingdom Temperance and General Provident Institution
United Standard Insurance Company Limited
The University Life Assurance Society
The Victory Reinsurance Company Limited
Wesleyan and General Assurance Society
The Western Australian Insurance Company Limited
The White Cross Insurance Company Limited
World-Wide Reassurance Company Limited
The Yorkshire Insurance Company Limited
Zurich Life Assurance Company Limited
FRIENDLY SOCIETIES
The Ancient Order of Foresters Friendly Society

Bodies whose agreements of the specified description are exempt agreements

Anglo-Saxons Friendly Society
Blackburn Philanthropic Mutual Assurance Society
British Benefit Society
British Order of Ancient Free Gardeners' Friendly Society
Brunel Assurance Society
Cirencester Benefit Society
Civil Servants' Annuities Assurance Society
Colmore Friendly Society
Coventry Assurance Society
Dentists' Provident Society
Devon and Exeter Women's Equitable Benefit Society
The Exeter Equitable Friendly Society
Grand United Order of Oddfellows Friendly Society
The Hampshire and General Friendly Society
Harvest Friendly Society
Hearts of Oak Benefit Society
The Ideal Benefit Society
Independent Order of Oddfellows Kingston Unity Friendly Society
The Independent Order of Odd Fellows Manchester Unity Friendly Society
The Independent Order of Rechabites, Salford Unity, Friendly Society
Leeds District of the Ancient Order of Foresters Investment Association
Leek Assurance Collecting Society
The Leicester District Foresters' Investment Society
Liverpool Victoria Friendly Society
The Manchester and Districts of the Ancient Order of Foresters Investment Association
National Deposit Friendly Society
National Equalized Druids Friendly Society
National United Order of Free Gardeners Friendly Society
New Tab Friendly Society
Northumberland and Durham Miners' Permanent Relief Fund Friendly Society
Nottingham Oddfellows Assurance Friendly Society
The Order of Druids Friendly Society
The Order of the Sons of Temperance Friendly Society
Original Holloway Society
Pioneer Benefit Society
Preston Catholic Collecting Society
Preston Shelley Assurance Collecting Society
Provident Reliance Friendly Society
Rational and County Assurance Society
Royal Liver Friendly Society
Scottish Friendly Assurance Society
The Scottish Legal Life Assurance Society

Bodies whose agreements of the specified description are exempt agreements

- The Shepherds Friendly Society
- Sons of Scotland Temperance Friendly Society
- Stepney District Distressed Members' Pension Benevolent Fund
- The Sussex Widow and Orphans Society
- Teachers Provident Society
- Time Assurance Society
- Tunbridge Wells Equitable Friendly Society
- Tunstall and District Assurance Collecting Society
- United Ancient Order of Druids Friendly Society
- United Kingdom Civil Service Benefit Society
- United Patriots' National Benefit Society
- West Surrey General Benefit Society
- Widow and Orphan Fund of the Woolwich District of the Independent Order of Odd Fellows, Manchester Unity Friendly Society
- Widow and Orphans' Fund, Stepney District of the Independent Order of Odd Fellows, Manchester Unity Friendly Society
- Widow, Widowers and Orphans' Fund of the Godalming District of the Independent Order of Oddfellows, Manchester Unity, Friendly Society
- Wiltshire Holloway Benefit Society
- CHARITIES
- The Central Board of Finance of the Church of England
- Church Commissioners
- The Church of England Pensions Board
- The Church of Scotland
- The Church of Scotland General Trustees
- Church of Scotland Trust
- The Representative Body of the Church in Wales
- Timber Trades Benevolent Society
- The Winchester Diocesan Board of Finance
- York Diocesan Board of Finance Limited
- AGRICULTURAL CORPORATIONS
- The Agricultural Mortgage Corporation Public Limited Company
- The Scottish Agricultural Securities Corporation Public Limited Company
- OTHER BODIES
- General Practice Finance Corporation Limited

App 1.3.3 **R**

Bodies Corporate	Description of Agreement and Enactments
	LAND IMPROVEMENT COMPANIES
The Lands Improvement Company:	<i>Relevant credit agreements relating to the purchase of land, being agreements made pursuant to</i>
	(a) the Lands Improvement Company's Acts 1853 to 1969; or
	(b) the Improvement of Land Acts 1864 and 1899.

	BODIES CORPORATE NAMED OR SPECIFICALLY REFERRED TO IN A PUBLIC GENERAL ACT - UNITED KINGDOM
The Greater London Authority	<i>Relevant credit agreements relating to the purchase of land</i> , being agreements made under the Authority's power to give financial assistance under section 30 of the Greater London Authority Act 1999.
Homes and Communities Agency	<i>Relevant credit agreements relating to the purchase of land</i> , being agreements made under the Agency's powers to give financial assistance under section 19 of the Housing and Regeneration Act 2008.
The Eastern Electricity Board:	Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.
The Electricity Council:	Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) , being agreements made between the Council and employees or prospective employees of the Council pursuant to section 2(5) of the Electricity Act 1947, as applied in relation to the Council by section 3(6) of the Electricity Act 1957.
The London Docklands Development Corporation:	Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) , being agreements made pursuant to section 136 of the Local Government, Planning and Land Act 1980.
The London Electricity Board:	Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.
The North Eastern Electricity Board:	Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.
Sea Fish Industry Authority:	<i>Relevant credit agreements relating to the purchase of land</i> , being agreements made pursuant to section 3(1)(e) and (f) of the Fisheries Act 1981.
The South Eastern Electricity Board:	Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.
The South Western Electricity Board:	Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.
The Southern Electricity Board:	Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.

The Yorkshire Electricity Board:	Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c), being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947. NORTHERN IRELAND
Eastern Health and Social Services Board:	<i>Relevant credit agreements relating to the purchase of land</i> , being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.
Northern Health and Social Services Board:	<i>Relevant credit agreements relating to the purchase of land</i> , being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972
Southern Health and Social Services Board:	<i>Relevant credit agreements relating to the purchase of land</i> , being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.
Welsh Ministers	<i>Relevant credit agreements relating to the purchase of land</i> , being agreements falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) which are made pursuant to section 36 of the New Towns Act 1981 and which related to property of the Commission for the New Towns transferred to them under a scheme made under section 51(1) of the Housing and Regeneration Act 2008.
Western Health and Social Services Board:	<i>Relevant credit agreements relating to the purchase of land</i> being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.

App 1.3.4 **R**

BODIES CORPORATE NAMED OR SPECIFICALLY REFERRED TO IN AN ORDER MADE UNDER SECTION 156(4), 444(1) OR 447(2)(a) OF THE HOUSING ACT 1985

- Abbey Life Executive Mortgages Limited
- Abbey Life Funding Limited
- Abbey Life Home Loans Limited
- Abbey Life Home Services Limited
- Abbey Life Mortgage Finance Limited
- Abbey Life Mortgage Loans Limited
- Abbey Life Mortgage Securities Limited
- Abbey Life Residential Loans Limited
- Albion Home Loans Limited
- Alliance & Leicester Mortgage Loans Limited
- Alliance & Leicester Mortgage Loans (No. 2) Limited
- Alliance & Leicester Mortgage Loans (No. 3) Limited
- Alliance & Leicester Mortgage Loans (No. 4) Limited
- Bradford & Bingley Homeloans Limited
- Bradford & Bingley Homeloans Management Limited
- Bradford & Bingley Loans Limited
- Bradford & Bingley Management Limited

BODIES CORPORATE NAMED OR SPECIFICALLY REFERRED TO IN AN ORDER MADE UNDER SECTION 156(4), 444(1) OR 447(2)(a) OF THE HOUSING ACT 1985

Bradford & Bingley Mortgages Limited
Bradford & Bingley Mortgage Management Limited
Bradford & Bingley Secured Loans Limited
Bradford & Bingley Secured Loans Management Limited
Britannia Mortgage Company Number One Limited
Britannia Mortgage Company Number Two Limited
Chelsea Mortgage Services Limited
CIS Home Loans Limited
CIS Mortgage Finance Limited
CIS Mortgage Maker Limited
CIS Residential Mortgages Limited
CL Mortgages Limited
Darlington Mortgage Services Limited
Derbyshire Home Loans Limited
General Portfolio Finance Limited
Gracechurch Mortgage Finance (No. 2) PLC
Gracechurch Mortgage Finance (No. 3) PLC
Halifax Loans Limited
Halifax Loans (No. 2) Limited
Halifax Loans (No. 3) Limited
Halifax Loans (No. 4) Limited
HMC First Home National PLC
Home Loans Direct Limited
Home Loans Direct Funding PLC
Household Mortgage Corporation PLC
Ipswich Mortgage Services Limited
LBS Mortgages Limited
Leamington Mortgage Corporation Limited
Leeds & Holbeck Mortgage Corporation Limited
Leeds & Holbeck Mortgage Funding Limited
Legal and General Mortgage Services Limited
Lombard Home Loans Limited
London and Manchester (Mortgages) (No. 1) Limited
London and Manchester (Mortgages) (No. 2) Limited
London and Manchester (Mortgages) (No. 3) Limited
London and Manchester (Mortgages) (No. 4) Limited
London and Manchester (Mortgages) (No. 5) Limited
Market Harborough Mortgages Limited
The Mortgage Corporation Limited
The National Home Loans Corporation plc
National Mutual Home Loans plc
National Westminster Home Loans Limited

BODIES CORPORATE NAMED OR SPECIFICALLY REFERRED TO IN AN ORDER MADE UNDER SECTION 156(4), 444(1) OR 447(2)(a) OF THE HOUSING ACT 1985

- Newbury Mortgage Services Limited
- Northern Rock Mortgage Services Limited
- North Yorkshire Mortgages Limited
- Norwich and Peterborough (LBS) Limited
- Norwich Union Mortgage Finance Limited
- Royal London Homebuy Limited
- Saffron Walden Mortgage Services Limited
- Secured Residential Funding PLC
- Stroud and Swindon Mortgage Company Limited
- Stroud and Swindon Mortgage Company (No. 2) Limited
- Sun Life of Canada Home Loans Limited
- Wesleyan Home Loans Limited
- West Bromwich Mortgage Company Limited

1.4 Exemption for high net worth borrowers and hirers and exemption relating to businesses

Exemption for high net worth borrowers and hirers

App 1.4.1 R

- (1) For the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order*, a declaration made by the *borrower* or *hirer* which provides that the *borrower* or *hirer* agrees to forgo the protection and remedies that would be available to the *borrower* or *hirer* if the agreement were a *regulated credit agreement* or a *regulated consumer hire agreement* must comply with ■ CONC App 1.4.2R and ■ CONC App 1.4.6R.
- (1A) For the purposes of ■ CONC 1.2.10R, a declaration made by the *borrower* which provides that the *borrower* agrees to waive the protections and remedies applicable to *regulated credit agreements*, except for those that transposed or implemented the *MCD* as it applied to the *United Kingdom* before *IP completion day*, must comply with ■ CONC App 1.4.2R and ■ CONC App 1.4.6AR.
- (2) For the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order* and of ■ CONC 1.2.10R, a statement in relation to the income or assets of the *borrower* or *hirer* (referred to in this section as a statement of high net worth) must comply with ■ CONC App 1.4.3 R, ■ CONC App 1.4.4 R and ■ CONC App 1.4.7 R.

- (3) For the purposes of articles 60H(1)(e) and 60Q(d) of the *Regulated Activities Order* and of ■ CONC 1.2.10R, the statement in (2) must be made during the period of one year ending with the day on which the agreement was made.

App 1.4.2 ■ R A declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* and of ■ CONC 1.2.10R shall

- (1) be set out in the *credit agreement* or *consumer hire agreement* no less prominently than other information in the agreement and be readily distinguishable from the background medium; and
- (2) be signed by the *borrower* or *hirer*, unless the agreement is so signed.

App 1.4.3 ■ R (1) Subject to ■ CONC App 1.4.4 R, a statement of high net worth shall be signed by

- (a) the *lender* or *owner*; or
- (b) an accountant who is a member of any of the bodies listed in (2).

(2) The bodies referred to in (1)(b) are:

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;
- (c) the Institute of Chartered Accounts in Ireland;
- (d) the Association of Chartered Certified Accountants;
- (e) the Chartered Institute of Management Accountants;
- (f) the Chartered Institute of Public Finance and Accountancy;
- (fa) the Association of International Accountants;
- (fb) the Association of Accounting Technicians;
- (fc) the Institute of Financial Accountants; and
- (g) a professional body for accountants established in a jurisdiction outside the United Kingdom.

App 1.4.4 ■ R A person who is

- (1) the *lender* or *owner*;
- (2) an employee or agent of the *lender* or *owner* or a person who otherwise acts on behalf of the *lender* or *owner* in relation to the *credit agreement* or *consumer hire agreement*; or
- (3) an *associate* of the *lender* or *owner*,

may only make a statement of high net worth if the *lender* or *owner* is a person who has *Part 4A permission to accept deposits*.

Declaration for exemption relating to businesses

App 1.4.5 ■ R A declaration for the purposes of articles 60C or 60O of the *Regulated Activities Order* shall

- (1) comply with ■ CONC App 1.4.8 R;
- (2) be set out in the *credit agreement* or *consumer hire agreement* no less prominently than other information in the agreement and be readily distinguishable from the background medium; and
- (3) be signed by the *borrower* or *hirer* or where the *borrower* or *hirer* is a *partnership* or unincorporated body of persons be signed by, or on behalf of, the *borrower* or *hirer*, unless the agreement is so signed.

Declaration by high net worth borrower or hirer

App 1.4.6 R The declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* must have the following form and content-

“Declaration by high net worth borrower or hirer

(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of article 60H(1)(d) or article 60Q(c) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under the Financial Services and Markets Act 2000 or the Consumer Credit Act 1974 if this agreement were a regulated agreement under those Acts.

I understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the lender and the borrower is unfair to the borrower.*

I am aware that if I am in any doubt as to the consequences of making this declaration then I should seek independent legal advice”.

**This section should be omitted in the case of a consumer hire agreement*

App 1.4.6A R **Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement**

The declaration for the purposes of ■ CONC 1.2.10R must have the following form and content-

“Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of ■ CONC 1.2.10R in the FCA’s Consumer Credit sourcebook.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under the Financial Services and Markets Act 2000, except for those that transposed or implemented the Mortgage Credit Directive (Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property).

I understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a

credit agreement where it determines that the relationship between the lender and the borrower is unfair to the lender.

I am aware that if I am in any doubt as to the consequences of making this declaration then I should seek independent legal advice.”

Statement of high net worth

App 1.4.7 **R** A statement of high net worth for the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order*, and **CONC 1.2.10R**, must have the following form and content:

“Statement of High Net Worth

(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/CONC 1.2.10R*)

I/We* (insert full name) of (insert address and postcode)..... confirm that I am/we* are a person qualified to make a statement of high net worth under rules made by the Financial Conduct Authority, by virtue of the fact that

In my/our* opinion (insert full name of borrower or hirer)

.....

of (insert address and post code of borrower or hirer)

.....

.....

is an individual of high net worth because he/she*

(a) received during the previous financial year net income totalling an amount of not less than £150,000*; and/or

(b) had throughout that year net assets with a total value of not less than £500,000*.

(insert one of the following declarations as appropriate)

I/We* declare that I am/we are* not connected to [insert name of the lender(s)/owner(s)][any person who is a lender/owner offering credit agreements/consumer hire agreements*].

I/We* declare that I am/we are* [connected to] [insert name of lender(s)/owner(s)] as I am/we are* [the lender(s)/owner(s)/an employee of/an agent of the lender(s)//owner(s)/a person who otherwise acts on behalf of the lender(s)//owner(s) in relation to the credit agreement/consumer hire agreement/an associate of the lender(s)//owner(s)].*

I/We declare that I am/we are*/[a/an] lender(s)/owner(s) offering credit agreements/ consumer hire agreements/ an employee of/an agent of/a person who otherwise acts on behalf of/ an associate of lender(s)/owner(s) offering credit agreements/ consumer hire agreements.*

In this statement-

- (a) "associate" shall be construed in accordance with article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (b) "financial year" means a period of one year ending with 31st March;
- (c) "net assets" shall not include -
 - (i) the value of the borrower's or hirer's primary residence or any loan secured on that residence;
 - (ii) any rights of the borrower or hirer under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and
 - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the borrower or hirer or on his retirement and to which he is (or his dependents are), or may be, entitled.
- (d) "net income" means the total income of the borrower or hirer from all sources reduced by the amount of income tax and national insurance contributions payable in respect of it; and
- (e) "previous financial year" means the financial year immediately preceding the financial year during which the statement is made".

**Delete as appropriate.*

Declaration for exemption relating to businesses

App 1.4.8 R A declaration for the purposes of articles 60C or 60O of the *Regulated Activities Order* must have the following form and content

"Declaration for exemption relating to businesses

(articles 60C and 60O of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I am/We are* entering this agreement wholly or predominantly for the purposes of a business carried on by me/us or intended to be carried on by me/us.

I/We* understand that I/We* will not have the benefit of the protection and remedies that would be available to me/us* under the Financial Services and Markets Act 2000 or under the Consumer Credit Act 1974 if this agreement were a regulated agreement under those Acts.

I/We* understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the lender and the borrower is unfair to the borrower.**

I am/We are aware that, if I am/we are in any doubts as to the consequences of the agreement not being regulated by the Financial Services and Markets Act 2000 or the Consumer Credit Act 1974, then I/we* should seek independent legal advice."

**Delete as appropriate.*

***This section should be omitted in the case of a consumer hire agreement.*

Consumer Credit sourcebook

CONC TP 5

Transitional provisions for prudential provisions in relation to debt management firms

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
5.1	CONC 10.3.3 R		A <i>firm</i> can calculate its prudential resources without deducting items 2 and 3 in CONC 10.3.3 R	From 1 April 2014 to 31 March 2017	1 April 2014
5.2	CONC 10.3.5 R		b = items 1, 4 and 5 in the Table of items which must be deducted from a <i>firm's</i> prudential resources (see CONC 10.3.3 R)	From 1 April 2014 to 31 March 2017	1 April 2014
5.3	CONC 10.3.6 G		The <i>guidance</i> at CONC 10.3.6 G should be read in the light of TP 5. 2	From 1 April 2014 to 31 March 2017	1 April 2014

Consumer Credit sourcebook

CONC TP 6

Transitional provisions for financial promotions and communications in relation to catalogues etc.

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
6.1	CONC 3	R	A <i>firm</i> will not contravene a rule in CONC 3 to the extent that a <i>financial promotion</i> or communication referred to in 6.2 would comply, as the case may be, with the Consumer Credit (Advertisements) Regulations 2010 or the Consumer Credit (Advertisements) Regulations 2004 (assuming they had not been repealed by Article 21 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).	From 1 April 2014 to 31 March 2015	1 April 2014
6.2		R	A <i>financial promotion</i> or a communication first communicated to the public in a catalogue, diary or work of reference comprising at least fifty printed pages copies of which are first communicated before 1 October 2014 and which in a reasonably prominent position either contains the date of its first publication or specifies a period being a calendar or seasonal period throughout which it is intended to have effect.	From 1 April 2014 to 31 March 2015	1 April 2014

Consumer Credit (Amendment No 2) Instrument 2015

CONC TP 7

Transitional provision in relation to the Consumer Credit (Amendment No 2) Instrument 2015

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
7.1	CONC	R	[expired]		

Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018

CONC TP 7A

Transitional provisions in relation to the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018

(1)	(2) Material to which the transitional pro- vision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
7A.1	CONC 6.7.2R, CONC 6.7.3AR to CONC 6.7.3DR, and CONC 6.7.27R to CONC 6.7.40G	R	A <i>firm</i> may comply with CONC as if the changes made by the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018 had not been made until (but not including) 1 September 2018. But where a <i>firm</i> elects, in relation to a credit card agreement, to comply before that date with CONC as amended by that Instrument, it must comply with the relevant provisions in full. Consequently, the time periods set out in the <i>rules</i> to which this transitional provision applies are to be determined by reference to the date on which the <i>firm</i> first acted in compliance (or purported compliance) with those <i>rules</i> .	1 March 2018 to 31 August 2018	1 March 2018
7A.2	CONC 6.7.27R to CONC 6.7.40G	G	The effect of TP 7A.1 is that no later than 1 September 2018 <i>firms</i> must start to look back at credit card <i>customers'</i> repayment records over the preceding 18-month period and identify any <i>customers</i> that fall within the application of CONC 6.7.27R (and must thereafter continue to do so on at least a <i>monthly</i> basis). <i>Firms</i> must then send those <i>customers</i> a communication in accordance	1 March 2018 to 31 August 2018	1 March 2018

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>with CONC 6.7.27R(3). Between 9 and 10 <i>months</i> after this communication is required to be sent, CONC 6.7.29R requires <i>firms</i> to take the additional steps set out in that <i>rule</i> with respect to that group of <i>customers</i>. 18 <i>months</i> after this CONC 6.7.27R communication is required to be sent, CONC 6.7.30R to CONC 6.7.40G potentially require the <i>firm</i> to take the further steps described in those <i>rules</i> in relation to that group of <i>customers</i> where CONC 6.7.30R applies. CONC 6.7.30R applies only where the amount that <i>customer</i> has paid to the <i>firm</i> towards the credit card balance, over the 18-<i>month</i> period following the date on which the CONC 6.7.27R communication was triggered, comprises a lower amount in principal than in interest, fees and charges. This means that the earliest date on which a <i>firm</i> may have obligations under CONC 6.7.30R is 1 March 2020 (except as mentioned below). However, <i>firms</i> are not required to delay implementation to the end of the six-<i>month</i> period set out in TP 7A.1: where a <i>firm</i> takes a step in compliance with one of the <i>rules</i> in question before 1 September 2018 in relation to a particular credit card agreement (for example, carrying out the 18-<i>month</i> review), the time for taking all subsequent steps required to be taken under those <i>rules</i> is to be determined by reference to the date of that first</p>		

(1)	(2) Material to which the transitional pro- vision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			step, and not by refer- ence to 1 September 2018 (or some later date).		

Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018

CONC TP 7B

Transitional provisions in relation to the Consumer Credit (High-Cost Credit) Instrument 2018

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
Handbook provision: coming into force	CONC 6.7.1(4)R, CONC 6.7.3AR to CONC 6.7.3DG, and CONC 6.7.27R to CONC 6.7.40G	R	A <i>firm</i> may comply with CONC as if the changes made by the Consumer Credit (High-Cost Credit) Instrument 2018 had not been made until (but not including) 19 June 2019. But where a <i>firm</i> elects, in relation to <i>retail revolving credit</i> , to comply, before that date, with CONC as amended by that Instrument, it must comply with the relevant provisions in full. Consequently, the time periods set out in the <i>rules</i> to which this transitional provision applies are to be determined by reference to the date on which the <i>firm</i> first acted in compliance (or pur-	19 December 2018 to 18 June 2019	19 December 2018

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
7B.2	CONC 6.27R to CONC 6.40G	G	<p>ported compliance) with those <i>rules</i>.</p> <p>The effect of TP 7B.1 is that no later than 19 June 2019 <i>firms</i> must start to look back at the repayment records for <i>retail revolving credit customers</i> over the preceding 18-month period and identify any <i>customers</i> that fall within the application of CONC 6.7.27R (and must thereafter continue to do so on at least a <i>monthly</i> basis). <i>Firms</i> must then send those <i>customers</i> a communication in accordance with CONC 6.7.27R(3). Between 9 and 10 months after this communication is required to be sent, CONC 7.7.29R requires <i>firms</i> to take the additional steps set out in that <i>rule</i> with respect to that group of <i>customers</i>. 18 months after the CONC 6.7.27R communication is required to be sent, CONC</p>	19 December 2018 to 18 June 2019	19 December 2018

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>6.7.30R to CONC 6.7.40G potentially require the <i>firm</i> to take the further steps described in those <i>rules</i> in relation to that group of <i>customers</i> where CONC 6.7.30R applies. CONC 6.7.30R applies only where the amount that <i>customer</i> has paid to the <i>firm</i> towards the balance on the <i>retail revolving credit</i> account, over the 18-month period following the date on which the CONC 6.7.27R communicated was triggered, comprises a lower amount in principal than in interest, fees and charges. This means that the earliest date on which a <i>firm</i> may have obligations under CONC 6.7.30R is 19 December 2020 (except as mentioned below). However, <i>firms</i> are not required to delay implementation to the end of the 6-month period set out in TP 7B.1: where a <i>firm</i> takes a step in</p>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>compliance with one of the <i>rules</i> in question before 19 June 2019 in relation to a particular <i>retail revolving credit</i> agreement (for example, carrying out the 18-month review), the time for taking subsequent steps required to be taken under those <i>rules</i> is to be determined by reference to the date of that first step, and not by reference to 19 June 2019 (or some later date).</p>		

Consumer Credit (Amendment No 2) Instrument 2015

CONC TP 8 Other transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	CONC 2.2.6R(1) to (3)	R	<p>A <i>firm</i> need not comply with CONC 2.2.6R(1) to (3) in relation to an automatic renewal of an agreement for an optional additional product which was entered into on or before 31 March 2016 provided:</p> <p>(1) the automatic renewal of the agreement is on substantially the same terms. The phrase "on substantially the same terms" is to be interpreted in the same way as in CONC 2.2.6R(11)(b) and (c)</p> <p>(2) on the occasion of the first automatic renewal on or after 1 April 2016, the <i>firm</i> takes reasonable steps to ensure that the <i>customer</i> is informed:</p> <p>(a) that the renewal of the agreement is optional;</p> <p>(b) that the <i>customer</i> may elect not to renew the agreement; and</p> <p>(c) of the effect of the non-renewal of the agreement, if any, on the service the provision of which constitutes the carrying on of a <i>credit-related regulated activity</i>; and</p> <p>(3) the procedure to be used by <i>customers</i> for electing not to renew the agreement pays due regard to the interests of <i>customers</i> and treats them fairly.</p>	From 1 April 2016	On 1 April 2016
1A	CONC chapters 3, 7 and 8	G	A <i>firm</i> may choose to comply with CONC chapters 3, 7 and 8 as if the changes to it made by the Money and Pensions Service (Consequential Amendments) Instrument 2021 had not been made.	26 November 2021 to 25 November 2022	26 November 2021
2	CONC 6.7.16B	R	A <i>firm</i> need not comply with CONC 6.7.16BR in respect of drawdowns of <i>credit</i> made on or before 12 November 2019.	From 12 November 2019	12 November 2019

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
3	CONC 6.7.16B	G	The effect of TP 2 is that where an agreement allows for multiple drawdowns, a <i>firm</i> must comply with CONC 6.7.16BR in respect of drawdowns of <i>credit</i> made after 12 November 2019, but need not do so for drawdowns made on or before this date.	From 12 November 2019	12 November 2019
4	CONC 5D.1.1R(2)	R	<p>The expressions in CONC 5D.1.1R(2) have the following meaning:</p> <p>(1) An “arranged overdraft” is the running-account facility provided for in an <i>authorised non-business overdraft agreement</i> that is a <i>regulated credit agreement</i>.</p> <p>(2) An “excluded account” is a personal current account that is offered on terms that:</p> <ul style="list-style-type: none"> (a) an agreement which provides authorisation in advance for the <i>customer</i> to overdraw on the account cannot arise; and (b) either: <ul style="list-style-type: none"> (i) the account cannot become overdrawn without prior arrangement; or (ii) no charge is payable (by way of interest or otherwise) if the account becomes overdrawn without prior arrangement; and (c) no charge is payable where the <i>firm</i> refuses a payment due to lack of funds. <p>(3) A “personal current account” means an account, other than a current account mortgage, which is a payment account within the meaning of the <i>Payment Accounts Regulations</i>.</p> <p>(4) A “private bank” is a <i>bank</i> or <i>building society</i>, or an operationally distinct brand of such a <i>firm</i>, over half of whose personal current account customers each had throughout the previous financial year net assets with a total value of not less than £250,000. For this purpose:</p> <ul style="list-style-type: none"> (a) net assets do not include: <ul style="list-style-type: none"> (i) the value of the <i>customer’s</i> primary residence or any loan secured on that residence; (ii) any rights of the <i>customer</i> under a qualifying contract of insurance within the meaning of the <i>Regulated Activities Order</i>; and (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the <i>customer</i> or 	18 December 2019 to 6 April 2020	18 December 2019

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>on retirement, and to which the <i>customer</i> (or the <i>customer's</i> dependents) are, or may be, entitled; and</p> <p>(b) "previous financial year" means the most recent period of one year ending with 31 March.</p> <p>(5) An "unarranged overdraft" is a <i>regulated credit agreement</i> that arises as a result of:</p> <p>(a) a personal current account becoming overdrawn in the absence of an arranged overdraft; or</p> <p>(b) the <i>firm</i> making available to the <i>customer</i> funds which exceed the limit of an arranged overdraft.</p>		
5	CONC 5D.1.1R(2)	G	<p>CONC 5D.1.1R(2) provides that the expressions referred to in that <i>rule</i> are to have the meaning set out at CONC 5C. Since CONC 5D comes into force before CONC 5C comes into force, CONC TP 8.4 provides that the expressions are to have the meaning set out in that transitional provision (which are identical to the meaning given to the expressions in CONC 5C) until CONC 5C comes into force.</p>	18 December 2019 to 6 April 2020	18 December 2019
6	CONC 8.3.11R	R	<p>(a) A <i>firm</i> which is carrying out activity described in CONC 8.3.9R immediately before 2 June 2023 may comply with CONC as if CONC 8.3.11R had not been made, until (but not including) 3 October 2023.</p> <p>(b) CONC TP 8(6)(a) does not affect the application of CONC 8.3.16R to a <i>firm</i> in respect of an <i>appointed representative</i> in circumstances where the appointed representative was appointed after 1 June 2023 or did not carry out activity described in CONC 8.3.9R immediately before 2 June 2023.</p>	2 June 2023 until (but not including) 3 October 2023	2 June 2023
7	CONC 8.3.11R	G	<p>The effect of CONC TP 8(6) is to provide a transitional period to all existing debt packager <i>firms</i> and their existing <i>appointed representatives</i>, where such <i>firms</i> or <i>appointed representatives</i> are carrying on debt packager business immediately before the prohibition in CONC 8.3.11R comes into force.</p>	2 June 2023 until (but not including) 3 October 2023	2 June 2023

Consumer Credit sourcebook

Schedule 1 Record keeping requirements

Sch 1

1.1	G	The aim of the <i>guidance</i> in the following table is to give the reader a quick overall view of the relevant record keeping requirements in <i>CONC</i> .
1.2	G	It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
4.4.3R(6)(a)	Information notice	A copy of the notice, and details of the date on which and the manner by which it was sent	When the notice is sent	18 months from the date on which the notice is sent
4.4.3R(6)(b)	Customer confirmation	A copy of the confirmation, and details of the date on which and the manner by which it was received	When the confirmation is received	18 months from the date on which the confirmation is received
6.6.3R	Actions concerning articles taken in <i>pawn</i> .	Specified details concerning taking articles in <i>pawn</i> , redemption and sale of articles in <i>pawn</i> .	Date of event referred to in section.	At least the longer of 5 years from the date on which an article is taken in <i>pawn</i> or 3 years from date of sale under section 121(1) of the CCA or the redemption of the article as the case may be.
7.13.2R	An <i>individual</i> who is, or is treated as, a <i>borrower</i> under a <i>credit agree-</i>	Accurate and adequate data (including in respect of debt and repayment	When a <i>firm</i> is notified in relation to an <i>individual</i> whom it is to pursue for	Not specified.

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
7.13.7R	<i>ment or consumer hire agreement.</i> An <i>individual</i> not being the <i>borrower</i> under a <i>credit agreement</i> or <i>consumer hire agreement</i> .	history) in relation to <i>individuals</i> owing, or treated as owing, money under <i>credit agreements</i> or <i>consumer hire agreements</i> . Record that the <i>individual</i> is not the <i>borrower</i> and should not be pursued for debt.	recovery of a debt. Date on which the <i>firm</i> is aware of true state of affairs.	Not specified.
8.3.4AR(2)	The grounds for being satisfied that the <i>firm</i> is unlikely to enter into a contract with a <i>customer</i> .	The grounds for being satisfied that the <i>firm</i> is unlikely to enter into a contract with a <i>customer</i> .	When the <i>firm</i> becomes satisfied that it is unlikely to enter into a contract with the <i>customer</i> .	Not specified.
8.8.1R(9)	Record of <i>debt management plans</i> entered into with <i>customers</i> .	An adequate record.	When the <i>firm</i> enters into <i>debt management plan</i> .	Until the contract between the <i>customer</i> and the <i>firm</i> is completed or terminated.
11.1.9R	Exercise of right to cancel under CONC 11.1.1 R.	Adequate record of use of right to cancel by <i>consumer</i> .	Date of exercise.	3 years.

Consumer Credit sourcebook

Schedule 2 Notification and reporting requirements (if any)

Sch 2

	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
G	CONC 10.2.14 R	Any change in a <i>firm's</i> prudential resources requirement	The changed prudential resources requirement	The change in the <i>firm's</i> prudential resources requirement	Within 14 <i>days</i> of the trigger event

Consumer Credit sourcebook

Schedule 3 Fees and other required payment

Sch 3
Not used

Consumer Credit sourcebook

Schedule 4 Not used

Sch 4
Not used

Consumer Credit sourcebook

Schedule 5 Rights of action for damages

Sch 5

Sch 5.1	G	The table below sets out the <i>rules</i> in <i>CONC</i> contravention of which by an <i>authorised person</i> may be actionable under section 138D of the Act (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.
Sch 5.2	G	If a "Yes" appears in the column headed "For private person?", the <i>rule</i> may be actionable by a " <i>private person</i> " under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the <i>FCA</i> has removed the right of action under section 138D(2) of the Act. If so, a reference to the <i>rule</i> in which it is removed is also given.
Sch 5.3	G	The column headed "For other person?" indicates whether the <i>rule</i> may be actionable by a <i>person</i> other than a <i>private person</i> (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of <i>person</i> by whom the rule may be actionable is given.

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
		The clear, fair and not misleading <i>rule</i> in CONC 3.3.1 R	Yes (Notes 2 & 3)	In part (Note 1)	No
		The prudential <i>rules</i> for <i>debt management firms</i> and <i>not-for-profit debt advice bodies</i> in CONC 10	No	Yes, CONC 10.1.6 R	No
		All other <i>rules</i> in <i>CONC</i>	Yes (Notes 2 & 3)	No	No
Notes					
(1)	CONC 3.3.1 R (2) provides that if, in relation to a particular communication or <i>financial promotion</i> , a <i>firm</i> takes reasonable steps to ensure it complies with the clear, fair and not misleading <i>rule</i> , a contravention of that rule does not give rise to a right of action under section 138D of the Act.				
(2)	The definition of private person includes a "relevant recipient of credit" which is defined on article 60L of the <i>Regulated Activities Order</i> as "a partnership consisting of two or three persons not all of whom are bodies corporate, or an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership".				

-
- (3) The definition of private person includes a person who is, by virtue of article 36J of that Order, to be regarded as a person who uses, may use, has or may have used or has or may have contemplated using, services provided by authorised persons in carrying on a *regulated activity* of the kind specified by article 36H of that Order or article 64 of that Order so far as relevant to that activity.

Consumer Credit sourcebook

Schedule 6 Rules that can be waived

Sch 6

- 6.1 As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*.

