

CONSUMER CREDIT INSTRUMENT 2014

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 137A (The FCA's general rules);
 - (b) section 137B (FCA general rules: clients' money, right to rescind etc);
 - (c) section 137C (FCA general rules: cost of credit and duration of credit agreements);
 - (d) section 137R (Financial promotion rules);
 - (e) section 137T (General supplementary powers);
 - (f) section 138D (Actions for damages); and
 - (g) section 139A (Power of the FCA to give guidance); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2014.

Amendments to the Handbook

- D. The Consumer Credit sourcebook (CONC) is amended in accordance with the Annex to this instrument.

Notes

- E. The Annex to this instrument contains notes (indicated by “**Note:**”) indicating where certain provisions which are included in the instrument were previously set out. These notes are included for the convenience of readers but do not form part of the legislative text.

The notes include the following abbreviations in relation to guidance previously issued by the Office of Fair Trading or to secondary legislation:

- (a) Irresponsible Lending Guidance (ILG);
- (b) Debt Management (and credit repair services) Guidance (DMG);
- (c) Credit Brokers and Intermediaries Guidance (CBG)
- (d) Debt Collection Guidance (DCG);
- (e) Mental Capacity Guidance (MCG);
- (f) Second Charge Lending Guidance (SCLG);
- (g) FSA/OFT Joint Guidance on Payment Protection Products (JGPPI);

- (h) Consumer Credit (Advertisements) Regulations 2010, SI 2010/1970 (CCAR);
and
- (i) Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484 (CCAR).

Citation

F. This instrument may be cited as the Consumer Credit Instrument 2014.

By order of the Board of the Financial Conduct Authority
27 February 2014

Annex

Consumer Credit sourcebook (CONC)

In this Annex, all the text is new and is not underlined, except in CONC 12, where additions are shown underlined.

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); and
- (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).

1.2 Who? What? Where?

1.2.1 R *CONC* applies:

- (1) unless otherwise stated in, or in relation to, a *rule*, to a *firm*:
 - (a) except where (b) applies, with respect to carrying on *credit-related regulated activities*;
 - (b) with respect to *operating an electronic system in relation to lending* in relation to a *borrower* or prospective *borrower* under a *P2P agreement*; and
- (2) with respect to activities connected to the activities in (a) and (b).

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 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*.

EEA territorial scope rule: compatibility with European law

- 1.2.6 R (1) *CONC* does not apply to an *incoming ECA provider* where, in providing a service, the provider is acting as such.
- (2) *CONC* applies to an *outgoing ECA provider* where, in providing a service, the provider is acting as such.
- (3) The territorial scope of *CONC* is otherwise modified to the extent necessary to be compatible with European law.
- (4) This *rule* overrides every other *rule* in this sourcebook.

[**Note:** article 3(3) of, and the Annex to, the *E-Commerce Directive*]

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*.

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* and 6.3 of *SCLG*]

[**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* 2.2.3R, 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.

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 Unfair Terms in Consumer Contracts Regulations 1999, Part 8 of the Enterprise Act 2002 and any other applicable consumer protection legislation.

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* 4.2.5R (adequate explanations).
[Note: paragraph 2.2 of *ILG*]
- 2.3.3 G *CONC* 6.7.2R 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* Appendix 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

Application

- 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 under 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 4.2.5R*;

[**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 3.9l 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 4 of the Compensation Act 2006) 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* which has no *permission* for that activity.

[**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 2.4.2R*.

[**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 2.4.2R*.

[**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) 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;

- (b) the direct marketing is in respect of the *firm's* similar products and services only;
- (c) 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; and
- (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*]

- (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 a payment protection product (the meaning of which is set out in *CONC 2.5.10R*) to the *credit agreement* or *consumer hire agreement* (whether the product is optional or required as a condition of the *credit agreement* or *consumer hire agreement*):

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

[Note: paragraph 2.62, 2nd bullet of *JGPPI*]

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

[Note: paragraph 2.62, 2nd bullet of *JGPPI*]

- (15) in relation to an insurance product or service or other linked product or service to the *credit agreement* or *consumer hire agreement* (whether the service or product is optional or required as a condition of the *credit agreement* or *consumer hire agreement*) discourage or

prevent the *customer* from seeking or obtaining the product or service from another source;

[**Note:** paragraph 4.26f of *CBG*]

- (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* 6.7.17R) 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 to 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* bank account without the *customer's* express authorisation to do so;

[**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* 4.4.2R 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 sensitive personal data in specified and limited circumstances to certain third parties without the *customer's* consent where a condition

of the Data Protection Act 1998 is satisfied, 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.

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 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.

2.6 **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.

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* or another *EEA State*.
- (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 2.7.11R* 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 2R*) in *CONC 2.7.11R* 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 European Consumer Credit Information form in accordance with the *disclosure regulations* and, unless *CONC 2.7.12R* 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 2.7.12R* 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 2.7.2R* to *CONC 2.7.5R*) 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).
- (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 2.7.2R* to *CONC 2.7.5R*) 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 5 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 *EEA*, 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 one or more *EEA States*.

[**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* or another *EEA State*.

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 1R*), 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*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA*

State of establishment 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 filled in 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 2.8.6R*) 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 Section 51 of the CCA was repealed by article 20(15) of the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(No 2) Order 2013 (SI 2013/1881). However, section 51 is saved for the purposes of regulation 52 of the *Payment Services Regulations*, the effect being that the section continues to apply in relation to a *regulated credit agreement* in place of regulation 58(1)(b) of the *Payment Services Regulations*.

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 includes 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* 2.10.1G, 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* 2.10.6G, this does not necessarily mean that the *customer* does not have the mental capacity to make an informed borrowing decision. See also *CONC* 2.10.15G.
[**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* 7.2.1R require *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* 2.10.6G 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 (see *CONC* 5.2 and 5.3).

[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* or assessment required by *CONC* 5.2.2R(1) 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 Annex 1R Distance marketing information

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

Information about the firm	
(1)	The name and the main business of the <i>firm</i> , the geographical address at which it is established and any other geographical address relevant for the <i>consumer's</i> relations with the <i>firm</i> .
(2)	Where the <i>firm</i> has a representative established in the <i>consumer's</i> EEA State of residence, the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
(3)	Where the <i>consumer's</i> dealings are with any professional other than the <i>firm</i> , the identity of that professional, the capacity in which he is acting with respect to the <i>consumer</i> , and the geographical address relevant to the <i>consumer's</i> relations with that professional.
(4)	The particulars of the public register in which the <i>firm</i> is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (<i>GEN 4</i>), a statement that the <i>firm</i> is on the <i>Financial Services Register</i> and its firm reference number.
Information about the financial service	
(5)	A description of the main characteristics of the service the <i>firm</i> will provide.
(6)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all related fees, charges and expenses, and all taxes paid through the <i>firm</i> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> 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 <i>firm's</i> 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 <i>firm</i> 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 <i>firm's</i> offer applies as it stands.
(10)	The arrangements for payment and performance.
(11)	Details of any specific additional cost to the <i>consumer</i> 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 <i>rules</i> 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 <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) in accordance with those <i>rules</i> , 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)	The <i>EEA State</i> or <i>States</i> whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
(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 <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.
Information about redress	
(19)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> 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 <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its

	liabilities.
[Note: Recitals 21 and 23 to, and article 3(1) of, the <i>Distance Marketing Directive</i>]	

2 Annex **Abbreviated distance marketing information**

2R

This Annex belongs to *CONC 2.7.11R*.

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

3 **Financial promotions and communications with customers**

3.1 **Application**

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 3.3.1R and the general requirements *rule* in CONC 3.3.2R and the *guidance* in CONC 3.3.5G to 3.3.11G 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*.
- 3.1.5 R CONC 3.3.1R 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 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, 3.5.1R and 3.6.1R (application);
 - (b) *CONC* 3.3.1R (clear, fair and not misleading);
 - (c) *CONC* 3.3.3R (credit regardless of status);
 - (d) *CONC* 3.5.3R, 3.5.5R, 3.6.6R (requirement for representative example or typical APR etc);
 - (e) *CONC* 3.5.7R (other financial promotions requiring a representative APR);
 - (f) *CONC* 3.5.12R (restricted expressions) and 3.6.8R (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. 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;
 - (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*; and

- (3) the *communication* or *approval* for *communication* of a *financial promotion* that is an *electronic commerce communication* to a person in an *EEA State* other than in the *UK*;

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.

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*]
- (2) If, for a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with (1), 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*, indicates to the *customer* the identity 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 A *firm* must not in a *financial promotion* or a communication to a *customer* suggest or state, expressly or by implication, that *credit* is available regardless of the *customer's* financial circumstances or status.

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

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

[**Note:** paragraph 5.2 (box) of *ILG*]

- (2) If *credit* is described as pre-approved, in accordance with *CONC* 3.5.12R the provision of the *credit* should be free of any conditions regarding the *customer's* credit status, and the *lender* or, in relation to a *P2P agreement* the *operator of an electronic system in relation to lending*, should have carried out the required assessment under *CONC* 5.

Guidance on clear, fair and not misleading

- 3.3.5 G A *firm* should ensure that each communication and each *financial promotion*:

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

[**Note:** in relation to identifying marketing material as such, paragraphs 3.7p of *CBG* and 3.18q of *DMG*]

- 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 If a communication or a *financial promotion* compares a product or service with one or more other products (whether or not provided by the *firm*), the *firm* should ensure that the comparison is meaningful and presented in a fair and balanced way.
- 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.
- [Note: paragraphs 3.9h of *CBG* and 3.18x (box) of *DMG*]

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* 3.3.1R 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*]

3.4 Risk warning for high-cost short-term credit

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 moneyadvice.service.org.uk”.

- (2) The risk warning in (1) must be included in a *financial promotion* contained in an *electronic communication* unless by reason of the limited space available on the medium in question it is not reasonably practicable to include the warning.
- (3) Instead of the website address in paragraph (1), a *firm* may include the Money Advice Service's logo registered community trade mark number EU009695909.
- (4) The risk warning must be included in a *financial promotion* in a prominent way.

3.4.2 G The Money Advice Service 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 the Money Advice Service.

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* includes 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 3.5.5R*, 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 3.5.7R*; 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*]

(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 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. 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*]

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 and concise way;
 - (b) accompanied by the words “representative example”;
 - (c) presented together with each item of information being given

equal prominence; and

- (d) given greater 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 3.5.10R*; and
 - (ii) any indication or incentive of a kind referred to in *CONC 3.5.7R*.

[**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* 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 3.5.5R* 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*]
- (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) If a rate of interest or a 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*]

- (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.

Other financial promotions requiring a representative APR

- 3.5.7 R (1) A *financial promotion* must include the *representative APR* if it:
- (a) indicates in any way, including by means of the name given to the business or the product 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 *lenders*; 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 *lenders*; or
- [**Note:** regulation 6 of *CCAR 2010*]
- (b) includes an 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;
- (c) 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) The *representative APR* must be given greater prominence than any indication or incentive in (1).

- (3) This *rule* does not apply to a *financial promotion* for an *authorised non-business overdraft agreement*.

- 3.5.8 G Whether or not a reference to speed or ease in *CONC 3.5.7R(1)(c)* 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.

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”; and
 - (3) the *representative APR* must be accompanied by the word “representative”.

[**Note:** regulation 7 of *CCAR 2010*]

Ancillary services

- 3.5.10 R (1) A *financial promotion* must include a clear and concise 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:
- (a) be no less prominent than any information in *CONC 3.5.5R(1)* included in the *financial promotion*; and
 - (b) 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 made;
 - (d) the expression “loan guaranteed”, “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*; or
 - (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*.

Total charge for credit and APR

- 3.5.13 R (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 1.2.5R* 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 1.2.4R* 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 1.2.4R* 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:
- (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* 3.6.10R the promotion must:

- (a) include all the other items of information (other than any item inapplicable to the particular case) listed in *CONC* 3.6.10R; 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* 3.6.10R 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 the *customer's* home:
- (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 3.6.10R* 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, 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 *lenders*; 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 *lenders*; 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 3.6.10R* 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 3.6.10R*; 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 3.6.10R*, 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 1.1.11R* to *1.1.18R* 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 1.1.9R 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 1.1.9R 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 required 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 3.7.4G* 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*.

Credit brokers' 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 of any financial arrangements with a *lender* that might impact upon the *firm's* impartiality in promoting a credit product to a *customer*;

[**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* 3.3.1R, clear and easily comprehensible.

[**Note:** paragraph 4.6 of *CBG*]

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* or an assessment required by *CONC* 5.2.2R(1); or
[**Note:** paragraph 5.3 of *ILG*]
 - (2) suggest or state, expressly or by implication, 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* 3.3.1R 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 Scheme* 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 (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*;

[**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* 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*]

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.

3.9.5 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 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 4 of the Compensation Act 2006) 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* 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.

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 systems in relation to lending* in relation to prospective *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*]

3.11 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* 3.11.2R 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* 3.11.2R.

4 Pre-contractual requirements

4.1 Content of quotations

Application

- 4.1.1 R This section, apart from *CONC* 4.1.4R, 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* 4.1.4R 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 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 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 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* 4.1.3R and *CONC* 4.1.4R (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.

4.2 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;
 - (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 (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* and 3.5 of *SCLG*]

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* 4.2.5R 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) 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]
- (5) Paragraphs (1) to (4) 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) 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, the payments in question are set out in (9).
[Note: section 74(1F) of CCA]
- (9) The payments referred to in (8) 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:** regulation 2 of SI 1983/1554]

[**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 4.2.5R* 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 4.2.5R*, 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 of *credit* to be provided and the associated cost and risk to the *customer* (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);
- (3) to the extent it is evident and discernible, the *customer's* level of understanding of the explanation provided; and
- (4) the channel or medium through which the credit transaction takes place.

[**Note:** paragraph 3.4 of *ILG*]

- 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 4.2.5R*.
[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 4.2.5R*.
[Note: paragraph 3.10 of *ILG*]
- 4.2.11 R Before a *lender* concludes that *CONC 4.2.5R*(1) to (4) 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 4.2.5R* 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 4.2.5R*.
[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 4.2.13R* 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 4.2.5R*, 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 may be increased;

- (d) where applicable, the interest rates may be increased based on the risks presented by the individual *customer*;
 - (e) 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 6.7.17R*) or otherwise extending the duration of the *credit* or of the *credit agreement*;
- (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 agreement 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.

[**Note:** paragraph 4.26c of *CBG*]

[**Note:** paragraph 3.13 of *ILG*]

4.2.16 G 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* 4.2.5R 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*]

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* 4.2.5R 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* 4.2.5R, 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 4.2.5R*.

[**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*]

4.3 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* in relation to a *borrower* or prospective *borrower* under a *P2P agreement*.
- 4.3.2 R This section (apart from *CONC 4.3.6R*) does not apply to:
- (1) an agreement under which the *lender* provides the prospective *borrower* with *credit* which exceeds £60,260; or
 - (2) an agreement secured on *land*.
- 4.3.3 G For the agreements referred to in *CONC 4.3.2R*, 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*]

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]

- 4.3.5 R Where *CONC* 4.3.4R 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.
- 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”

4.4 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*.

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*]

4.5 Commissions

Application

- 4.5.1 R (1) *CONC* 4.5.2G applies to a *firm* with respect to *consumer credit lending*.
- (2) *CONC* 4.5.3R and 4.5.4R apply to a *firm* with respect to *credit broking* in relation to:
- (a) *regulated credit agreements*; and
- (b) *regulated consumer hire agreements*.
- (3) *CONC* 4.5.3R and 4.5.4R also apply to a *firm* carrying on the activities specified in article 36A(1)(a) or (c) 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*.

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 disclose to a *customer* in good time before a *credit agreement* or a *consumer hire agreement* is entered into, the existence of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner* or a third party in relation to a *credit agreement* or a *consumer hire agreement*, where knowledge of the existence or amount of the commission could actually or potentially:
- (1) affect the impartiality of the *credit broker* in recommending a particular product; or
 - (2) have a material impact on the *customer's* transactional decision.
- [Note: paragraphs 3.7i (box) and 3.7j of *CBG* and 5.5 (box) of *ILG*]
- 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*]

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* 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 A *firm* must set out, in plain and intelligible language, the scope of the agreed

continuous payment authority and how it will operate.

[**Note:** paragraph 3.9miii of *DCG*]

4.7 Information to be provided on entering a current account agreement

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*]

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* 4.2.5R.

[**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* 4.8.2R.

[**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* 4.8.4R where:

- (1) the offer of the higher amount was based on a proper *creditworthiness assessment* or assessment required by *CONC* 5.2.2R(1); 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* or assessment required by *CONC* 5.2.2R(1) 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*]

5 Responsible lending

5.1 Application

- 5.1.1 R This chapter applies to a *firm* with respect to *consumer credit lending*, unless otherwise stated in, or in relation to, a *rule*.

5.2 Creditworthiness assessment: before agreement

- 5.2.1 R (1) Before making a *regulated credit agreement* the *firm* must undertake an assessment of the creditworthiness of the *customer*.

[**Note:** section 55B(1) of *CCA*]

- (2) A *firm* carrying out the assessment required in (1) must consider:

- (a) the potential for the commitments under the *regulated credit agreement* to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time the *regulated credit agreement* is to be made; and

[**Note:** paragraph 4.1 of *ILG*]

- (b) the ability of the *customer* to make *repayments* as they fall due over the life of the *regulated credit agreement*, or for such an agreement which is an *open-end agreement*, to make *repayments* within a reasonable period.

[**Note:** paragraph 4.3 of *ILG*]

- (3) A creditworthiness assessment must be based on sufficient information obtained from:

- (a) the *customer*, where appropriate; and
 (b) a *credit reference agency*, where necessary.

[**Note:** section 55B(3) of *CCA*]

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

- (a) an agreement secured on *land*; or
 (b) an agreement under which a *person* takes an article in *pawn*.

[**Note:** section 55B(4) of *CCA*]

- (5) This *rule* does not apply, except to the agreements in (6), to:

- (a) a *non-commercial agreement*; or

- (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account; or
 - (c) a *small borrower-lender-supplier agreement* for *restricted-use credit*.
[**Note:** section 74 of *CCA*]
- (6) The agreements referred to in (5) and therefore to which this *rule* does apply are:
- (a) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account which is an *authorised business overdraft agreement* or an *authorised non-business overdraft agreement*; and
[**Note:** section 74(1B) and (1C) of *CCA*]
 - (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account 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*]
- (7) Where the *borrower-lender agreement* in question is 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:** article 8 of the *Consumer Credit Directive*]

Scope of the pre-contract assessments

- 5.2.2 R (1) Before entering into a *regulated credit agreement* which is excluded from *CONC* 5.2.1R (see (4), (5) and (6)), a *firm* must carry out an assessment of the potential for the commitments under the agreement to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time the agreement is to be made.
- [**Note:** paragraphs 1.14 and 4.1 of *ILG*]
- (2) Paragraph (1) does not apply to an agreement to which *CONC* 4.7.2R(1) applies (overrunning).
- (3) A *firm* must consider sufficient information to enable it to make a reasonable *creditworthiness assessment* or a reasonable assessment required by (1).
- [**Note:** paragraph 4.21 of *ILG*]
- 5.2.3 G The extent and scope of the *creditworthiness assessment* or the assessment required by *CONC* 5.2.2R(1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:
- (1) the type of *credit*;
 - (2) the amount of the *credit*;
 - (3) the cost of the *credit*;
 - (4) the financial position of the *customer* at the time of seeking the *credit*;
 - (5) the *customer's* credit history, including any indications that the *customer* is experiencing or has experienced financial difficulties;
 - (6) the *customer's* existing financial commitments including any repayments due in respect of other *credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm*;
 - (7) any future financial commitments of the *customer*;
 - (8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the *customer*;
 - (9) the vulnerability of the *customer*, in particular where the *firm* understands the *customer* has some form of mental capacity

limitation or reasonably suspects this to be so because the *customer* displays indications of some form of mental capacity limitation (see *CONC 2.10*).

[**Note:** paragraph 4.10 of *ILG*]

Proportionality of assessments

- 5.2.4 G (1) To consider all of the factors set out in *CONC 5.2.3G* in all cases is likely to be disproportionate.
- [**Note:** paragraph 4.11 of *ILG*]
- (2) A *firm* should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of the *credit* being sought and the potential risks to the *customer*. The risk of *credit* not being *sustainable* directly relates to the amount of *credit* granted and the *total charge for credit* relative to the *customer's* financial situation.
- [**Note:** paragraph 4.11 and part of 4.16 of *ILG*]
- (3) A *firm* should consider the types and sources of information to use in its *creditworthiness assessment* and assessment required by *CONC 5.2.2R(1)*, which may, depending on the circumstances, include some or all of the following:
- (a) its record of previous dealings;
 - (b) evidence of income;
 - (c) evidence of expenditure;
 - (d) a credit score;
 - (e) a *credit reference agency* report; and
 - (f) information provided by the *customer*.
- [**Note:** paragraph 4.12 of *ILG*]
- (4) A high level of scrutiny in the assessment required by *CONC 5.2.2R(1)* would normally be expected before the *lender* enters into a *regulated credit agreement* secured by a second or subsequent charge on the *customer's* home.
- [**Note:** paragraph 4.17 of *ILG*]

5.3 Conduct of business in relation to creditworthiness and affordability

Creditworthiness and sustainability

- 5.3.1 G (1) In making the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)*, a *firm* should take into account more than assessing the *customer's* ability to repay the *credit*.
- [Note: paragraph 4.2 of *ILG*]
- (2) The *creditworthiness assessment* and the assessment required by *CONC 5.2.2R(1)* should include the *firm* taking reasonable steps to assess the *customer's* ability to meet *repayments* under a *regulated credit agreement* in a *sustainable* manner without the *customer* incurring financial difficulties or experiencing significant adverse consequences.
- [Note: paragraphs 4.1 (box) and 4.2 of *ILG*]
- (3) A *firm* in making its *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)* may take into account future increases in income or future decreases in expenditure, where there is appropriate evidence of the change and the *repayments* are expected to be *sustainable* in the light of the change.
- [Note: paragraph 4.9 of *ILG*]
- (4) If a *firm* takes income or expenditure into account in its *creditworthiness assessment* or its assessment required under *CONC 5.2.2R(1)*:
- (a) the *firm* should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;
 - (b) it is not generally sufficient for a *firm* to rely solely for its assessment of the *customer's* income and expenditure, on a statement of those matters made by the *customer*;
 - (c) its assessment should be based on what the *firm* knows at the time of the assessment.
- [Note: paragraph 4.13, 4.14 and 4.15 of *ILG*]
- (5) An example of where it may be reasonable to take into account expected future income would be, in the case of loans to fund the provision of further or higher education, provided that an appropriate assessment required by this chapter is carried out and there is an appropriate exercise of forbearance in respect of initial repayments, for example, deferring or limiting the obligation to repay until the *customer's* income has reached a specified level. Any assumptions regarding future income should be reasonable and capable of substantiation in the individual case and the products should be

designed in a way to minimise the risks to the *customer*.

[**Note:** footnote 21 to paragraph 4.9 (box) of *ILG*]

- (6) For the purposes of *CONC* “sustainable” means the *repayments* under the *regulated credit agreement* can be made by the *customer*:
- (a) without undue difficulties, in particular:
 - (i) the *customer* should be able to make *repayments* on time, while meeting other reasonable commitments; and
 - (ii) without having to borrow to meet the *repayments*;
 - (b) over the life of the agreement, or for such an agreement which is an *open-end agreement*, within a reasonable period; and
 - (c) out of income and savings without having to realise security or assets; and

“unsustainable” has the opposite meaning.

[**Note:** paragraphs 4.3 and 4.4 of *ILG*]

- (7) For a *regulated credit agreement* which is an *open-end agreement* the *firm*, in making its *creditworthiness assessment* or the assessment required by *CONC* 5.2.2R(1), should:
- (a) make a reasonable assessment of whether the *customer* is able to meet the *repayments* in a *sustainable* manner; and
 - (b) make the assessment based on reasonable assumptions about the likely duration of the *credit*.

[**Note:** paragraph 4.5 of *ILG*]

- (8) For a *regulated credit agreement* for *running account credit* the *firm*, in making its *creditworthiness assessment* or the assessment required by *CONC* 5.2.2R(1):
- (a) should consider the *customer’s* ability to repay the maximum amount of *credit* available (equivalent to *the credit limit*) under the agreement within a reasonable period;
 - (b) may, in considering what is a reasonable period in which to repay the maximum amount of *credit* available, 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*; and
 - (c) should not use the assumption of the amount necessary to

make only the minimum *repayment* each *month*.

[**Note:** paragraph 4.6 of *ILG*]

- (9) For a *regulated credit agreement* for *running account credit* the *firm* should set the *credit limit* based on the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)* and taking into account the matters in *CONC 5.2.3G*, and, in particular, the information it has on the *customer's* current disposable income taking into account any reasonably foreseeable future changes.

[**Note:** paragraph 4.6 (box) of *ILG*]

- (10) An example of a reasonably foreseeable future change in disposable income which a *firm* should take into account in setting a *credit limit* may include where a *customer* is known to be, or it is reasonably foreseeable that a *customer* is, close to retirement and faces a significant fall in disposable income.

[**Note:** paragraph 4.6 (box) of *ILG*]

- (11) Where a *firm* requests information from a *customer* for its *creditworthiness assessment* or its assessment required by *CONC 5.2.2R(1)* and the information provided by the *customer* is false and the *firm* has no reason to know this is the case, the *firm* should not contravene *CONC 5.2.1R* or *5.2.2R*.

[**Note:** paragraph 4.10 of *ILG*]

- (12) Subject to the relevant legal constraints, *FCA* encourages the sharing between *lenders* of accurate data about the performance of a *customer's* account and the settlement of outstanding debts, as the process of making the assessments in this chapter is assisted by *lenders* registering such data with *credit reference agencies*, in a timely manner.

- 5.3.2 R A *firm* must establish and implement clear and effective policies and procedures to make a reasonable *creditworthiness assessment* or a reasonable assessment required by *CONC 5.2.2R(1)*.

[**Note:** paragraph 4.19 of *ILG*]

- 5.3.3 G Under the procedures required by *CONC 5.3.2R* a *firm* should take adequate steps, insofar as it is reasonable and practicable to do so, to ensure that information (including information supplied by the *customer*) on an application for *credit* relevant to a *creditworthiness assessment* or an assessment required by *CONC 5.2.2R(1)* is complete and correct.

[**Note:** paragraph 4.29 of *ILG*]

Unfair business practices: lenders

- 5.3.4 R A *firm* must not base its *creditworthiness assessment*, or its assessment required under *CONC 5.2.2R(1)*, primarily or solely on the value of any *security* provided by the *customer*, but this *rule* does not apply in relation to

a *regulated credit agreement* under which the *firm* takes an article in *pawn* and the *customer's* liability is limited to the value of the article plus interest on the *credit* and there are no additional charges.

- 5.3.5 R A *firm* must not advise or encourage a *customer* to enter into a *regulated credit agreement* for an amount of *credit* higher than the *customer* initially requested if the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)* indicates that repayment of the higher amount would not be *sustainable* or the *firm* ought reasonably to suspect that that is the case.

[**Note:** paragraph 4.28 of *ILG*]

- 5.3.6 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*, unless the *customer* is permitted to check the application before signing the agreement.

[**Note:** paragraph 4.30 of *ILG*]

- 5.3.7 R A *firm* must not accept an application for *credit* under a *regulated credit agreement* where the *firm* knows or ought reasonably to suspect that the *customer* has not been truthful in completing the application in relation to information supplied by the *customer* relevant to the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)*.

[**Note:** paragraph 4.31 of *ILG*]

- 5.3.8 G An example of where a *firm* ought reasonably to suspect that the *customer* has not been truthful may be that the information supplied by the *customer* concerning income or employment status is clearly inconsistent with other available information.

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

Application

- 5.5.1 R This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a prospective *borrower* under a *P2P agreement*.
- 5.5.2 G (1) This section contains *rules* that apply to the *person* operating the electronic system that facilitates *persons* becoming *lenders* and *borrowers* under *P2P agreements*, in contrast to *CONC 5.2* which applies to the *lender*.
- (2) A *P2P agreement* may also be a *credit agreement* or a *regulated credit agreement* in which case applicable provisions of the *CCA* or *CONC* will apply to such agreements. The extent to which *CCA* provisions apply to a *lender* will depend largely on whether the *lender* makes the *credit agreement* in the course of carrying on a business.

Creditworthiness assessment

- 5.5.3 R (1) Before a *P2P agreement* is made, a *firm* must undertake an assessment of the creditworthiness of the prospective *borrower*.
- (2) A *firm* carrying out the assessment in (1) must consider:
- (a) the potential for the commitments under the *P2P agreement* to adversely impact the prospective *borrower's* financial situation, taking into account the information of which the *firm* is aware at the time the *P2P agreement* is to be made; and
- (b) the ability of the prospective *borrower* to make *repayments* as they fall due over the life of the *P2P agreement*, or for such an agreement which is an *open-end agreement*, to make *repayments* within a reasonable period.
- (3) A creditworthiness assessment must be based on sufficient information obtained from
- (a) a prospective *borrower*, where appropriate; and
- (b) a *credit reference agency*, where necessary.
- (4) This *rule* does not apply to an agreement under which a *person* takes

an article in *pawn*.

- 5.5.4 R Where *CONC 5.5.3R* applies to a *firm*, the *firm* must comply with *CONC 5.3.2R*, *5.3.4R*, *5.3.5R*, *5.3.6R* and *5.3.7R* to the same extent as if it were the *lender* under an agreement to which those *rules* apply and should take into account the *guidance* in *CONC 5.3* to the same extent, and should also take into account *CONC 5.2.3G* and *5.2.4G* treating them as guidance on *CONC 5.5.3R*.
- 5.5.5 R A *firm* must consider sufficient information to enable it to make a reasonable assessment required by *CONC 5.5.3R*.
[**Note:** paragraph 4.21 of ILG]
- 5.5.6 R Before a *P2P agreement* is entered into under which a *person* takes an article in *pawn*, the *firm* must:
- (1) undertake the assessment referred to in *CONC 5.2.2R(1)* of the prospective *borrower*; and
 - (2) comply with *CONC 5.3.2R*, *5.3.4R*, *5.3.5R*, *5.3.6R* and *5.3.7R* to the same extent as if it were the *lender* under an agreement to which those *rules* apply, and should also take into account the *guidance* in *CONC 5.2.3G* and *5.2.4G* and *CONC 5.3* to the same extent.

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 6.2*, *6.5* and *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 6.7.17R* to *CONC 6.7.26R* 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

- 6.2.1 R (1) Before significantly increasing:
- (a) the amount of *credit* to be provided under a *regulated credit agreement*; or
 - (b) a *credit limit* for *running-account credit* under a *regulated credit agreement*;
- the *lender* must undertake an assessment of the *customer's* creditworthiness.
- [**Note:** section 55B(2) of *CCA*]
- (2) A *firm* carrying out the assessment in (1) must consider:
- (a) the potential for the commitments under the *regulated credit agreement* to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time that the increase in (1) is to be granted; and
 - (b) the ability of the *customer* to make *repayments* as they fall due over the life of the *regulated credit agreement*, or for such an agreement which is an *open-end agreement*, to make *repayments* within a reasonable period.
- [**Note:** paragraphs 4.1 and 4.3 of *ILG*]
- (3) A creditworthiness assessment must be based on sufficient information obtained from:
- (a) the *customer*, where appropriate, and
 - (b) a *credit reference agency*, where necessary.
- (4) This *rule* does not apply to:
- (a) an agreement secured on *land*; or
 - (b) an agreement under which a *person* takes an article in *pawn*.
- (5) This *rule* does not apply, except to the agreements in (6), to:
- (a) a *non-commercial agreement*;
 - (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account;
 - (c) a *small borrower-lender-supplier agreement* for *restricted-*

use credit.

- (6) The agreements referred to in (5) and therefore to which this *rule* does apply are:
- (a) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account which is an *authorised business overdraft agreement* or an *authorised non-business overdraft agreement*; or
[**Note:** section 74(1B)/(1C) of CCA]
 - (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account which would be an *authorised non-business overdraft agreement* but for the fact that the *credit* is not repayable on demand within three *months*.
[**Note:** section 74(1D) of CCA].

6.2.2 R Where *CONC* 6.2.1R applies to a *firm*:

[**Note:** paragraph 4.2 of *ILG*]

- (1) the *firm* must comply with *CONC* 5.3.2R, 5.3.4R, 5.3.5R, 5.3.6R and 5.3.7R
- (2) the *rules* in *CONC* 5.3 referred to in (1) apply with the modifications necessary to take into account that *CONC* 6.2.1R concerns increases in the amount of *credit* and in *credit limits* and when the increase is to take place; and
- (3) the *guidance* in *CONC* 5.3 applies accordingly and *CONC* 5.2.3G and 5.3.4G apply treating them as guidance on *CONC* 6.2.1R.

6.2.3 R A *firm* must consider sufficient information available to it at the time of the increase referred to in *CONC* 6.2.1R to enable it to make a reasonable assessment required by that *rule*.

[**Note:** paragraph 4.21 of *ILG*]

6.3 Information to be provided on a current account agreement and on significant overdrawing

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 6.3.3R* 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* 6.6.3R, the entries in the books or other records in respect of the dealings mentioned in *CONC* 6.6.3R(1) to (3) must contain the information in *CONC* 6.6.7R to *CONC* 6.6.9R.

[**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* 6.6.4R 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* 6.6.3R 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 taken 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 of 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 6.7.17R* to *CONC 6.7.26R* 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.

Business practices

- 6.7.2 R A *firm* must monitor a *customer's* repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.
[**Note:** paragraph 6.2 of *ILG*]
- 6.7.3 G The action referred to in *CONC 6.7.2R* 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*]

Credit card and store card requirements

6.7.4 R A *firm* must first allocate a *repayment* to the debt subject to the highest rate of interest 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.

[Note: paragraph 6.3 of *ILG*]

6.7.5 R (1) 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.

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, the *customer's credit limit* on a credit card or store card 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 *regulated credit agreement* for a credit card or a store 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) A *firm* under a *regulated credit agreement* for a credit card or store card must notify the *customer* at least 30 days before a *credit limit* increase under the agreement comes into effect. [**Note:** paragraph 6.17 of *ILG*]
- (2) Paragraph (1) does not apply where a *customer* requests a temporary *credit limit* increase to deal with an emergency situation and, where *CONC* 6.2.1R applies, the *firm* carries out the required creditworthiness assessment in relation to any such increase.
- 6.7.10 R Where a *customer* is at risk of financial difficulties, a *firm* under a *regulated credit agreement* for a credit card or a store 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* 6.7.7R and 6.7.10R 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 (1) A *firm* under a *regulated credit agreement* for a credit card or store card must notify a *customer* at least 30 days before an increase in the rate of interest under the agreement comes into effect.
- [**Note:** paragraph 6.18 of *ILG*]
- (2) Paragraph (1) does not apply in the following cases where in relation to an agreement:
- (a) the interest rate is set to directly track the movement in an external index (such as a base rate), which was adequately explained under *CONC* 4.2.15R and was clearly stated in the agreement; or

(b) the period of a promotional interest rate has come to an end.

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* 6.7.14R 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*]

Rules on refinancing: general

6.7.17 R (1) In *CONC* 6.7.18R to *CONC* 6.7.23R “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.

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 sentence 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 bullet points 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.”.

- 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.

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* 6.7.24R 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*]

- 6.7.26 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*]

6.8 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, following an introduction to a source of *credit* or of bailment (or in Scotland of hire), the *individual* has not entered into an agreement to which section 155 applies within six *months* of an introduction.

[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 *regulated 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 to a request for a refund.
[**Note:** paragraph 6.17 of *CBG*]
- 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.
- (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*]

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*.
- 7.1.2 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*;
 - (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 1.2.2R* *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 1.2.2R* 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.

7.2 Clear effective and appropriate arrears policies and procedures

Arrears policies

- 7.2.1 R A *firm* must establish and implement clear, effective and appropriate policies and procedures for:
- (1) dealing with *customers* whose accounts fall into arrears;
[Note: paragraph 7.2 of *ILG*]
 - (2) the fair and appropriate treatment of *customers*, who the *firm* understands or reasonably suspects to be particularly 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 particularly vulnerable *customers*.
[Note: paragraph 2.2 (box) of *DCG*]
- 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*]

7.3 Treatment of customers in default or arrears (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 are under the agreement passed by assignment or operation of law. This reflects article 39M of the *Regulated Activities Order*.

Dealing fairly with customers in arrears or default

- 7.3.2 G When dealing with *customers* in default or in arrears difficulties a *firm* should pay due regard to its obligations under *Principle 6* (Customers' interests) to treat its *customers* fairly.

[**Note:** paragraphs 7.12 of *ILG* and 2.2 of *DCG*]

Forbearance and due consideration

- 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 6*, 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 default or in arrears difficulties with forbearance and due consideration.

[**Note:** paragraphs 7.3 and 7.4 of *ILG* and 2.2 of *DCG*]

- 7.3.5 G Examples of treating a *customer* with forbearance would include the *firm* doing one or more of the following, as may be relevant in the circumstances:

- (1) considering 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 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).

- 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 Where appropriate, a *firm* should direct a *customer* in default or in arrears difficulties to sources of free and independent debt advice.
[Note: paragraph 2.2 of DCG]
- 7.3.8 G An example of where a *firm* is likely to contravene *Principle 6* and *CONC 7.3.4R* is where the *firm* does not allow for alternative, affordable payment amounts to repay the debt due in full, where the *customer* is in default or arrears difficulties 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]
- 7.3.11 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* 7.3.11R 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.

[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*]

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 other than as a last resort, having explored all other possible options.

[Note: paragraphs 7.14 of *ILG*, 3.7t of *DCG* and 6.3 of *SCLG*]

- 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 default or arrears difficulties 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 by

second or subsequent charges 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*]

7.4 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* 6.5.2R, 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* 6.5.2R 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 7.5.5R* 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 4.6.2R*; 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 4.6.2R*; 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 4.6.2R* 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*]

- 7.6.3 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 7.6.3R* 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 is 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 7.6.9G*) 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 6.7.17R*.
- (3) Where a *firm* exercises forbearance:
- (a) paragraph (1) applies or continues to apply to the agreement;

but

- (a) 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* 6.7.17R to 6.7.23R.
- (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.

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 6.7.17R* 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*.

- 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* 6.7.17R to 6.7.23R 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;

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* 7.6.12R, 7.6.13R and 7.6.14R 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* 7.6.14R 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* 9.1.1R (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* 7.6.1R, 7.6.12R, 7.6.13R and 7.6.14R.

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*]

7.8 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 7.8.1R 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 7.9.2R 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 3.3.1R 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]

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 7.9.7R 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 7.9.7R 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 7.9.8G.

- 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 7.9.10R*.

[**Note:** paragraphs 3.9a (box) and 3.9b (box) of *DCG*]

Debt collection visits

- 7.9.12 R 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 give adequate notice prior to an initial visit to the *customer* may not contravene *CONC 7.9.12R* if 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's* 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* 7.10.1R 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* 7.2.1R (and its accompanying *guidance*) which requires *firms* to establish and implement policies and procedures for the fair and appropriate treatment of particularly 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 7.11.6R 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*.

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*]

(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*]

- 7.12.3 G (1) *CONC* 1.2.2R 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* 7.9.7R; 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 the Data Protection Act 1998 and, in particular, to adhere to the eight 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 1.2.2R 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, Acknowledgment, 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 7.14.10R 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 7.14.10R.
- (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 A *firm* which is lawfully entitled to pass on a *customer's* details to a third party pursuant to the Data Protection Act 1998 should nonetheless, as a matter of good practice, obtain the *customer's* consent before passing on the information to the third party.
[Note: paragraph 3.9e of DCG]

7.17 Notice of sums in arrears under P2P agreements for fixed-sum credit

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 7.17.4R* 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
- (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*.
- 7.17.4 R (1) The *firm* must, within the period of 14 days beginning with the day on which the conditions in *CONC 7.17.3R* are satisfied, give the *borrower* a notice including the information set out in *CONC 7.17.7R* and *7.17.8R*.
- (2) After giving that notice, the *firm* must give the *borrower* further notices including the information in *CONC 7.17.7R* and *7.17.8R* 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 7.17.4R* 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 7.17.4R* with a copy of the current arrears information sheet under section 86A of the *CCA* with the following modifications:
 - (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.”.

- (5) The *firm* must not charge the *borrower* a fee in connection with preparation of or the giving of the notice required by *CONC 7.18.4R*.

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 7.17.4R* 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 (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

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 7.18.3R* 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 7.18.5R*.
- (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 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 7.18.3R* 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* 7.18.3R is not more than £2, the notice:
- (a) need not include any of the information or statements referred to in *CONC* 7.18.4R;
 - (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

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* 7.19.4R 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 7.19.4R* 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.

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.

- 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*]

- 8.1.4 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*.

[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 the Money Advice Service; and
 - (2) on its web-site the following link to the Money Advice Service web-site (<https://www.moneyadviceservice.org.uk/en/articles/where-to-go-to-get-free-debt-advice>).
- [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, on 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*]

[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*].

8.3.3 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*]

- 8.3.5 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*]

- 8.3.7 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*]
- (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*]

- 8.3.8 G (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* 3.3.1R, and should be in plain and intelligible language in accordance with *CONC* 3.3.2R. 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* 8.3.7R 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.

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 facilitated by the Money Advice Trust 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* 8.3.2R 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* 8.5.3G. 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* 8.6.5R 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 11.1.11R 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 11.1.1R 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* 8.5.1R 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 R A *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;
[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*]

8.8 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 Commission's Office under the Data Protection Act 1998; 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* 8.9.2R 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 of *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 the Data Protection Act 1998;
[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* 8.9.4R 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 the Data Protection Act 1998; 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*]

9 Credit reference agencies

9.1 Application

9.1.1 R This chapter applies to a *firm* with respect to *providing credit references*.

9.2 Conduct of business: correction of entries in credit reference agency files

9.2.1 R Within 10 *working days* after any of the following events:

- (1) the *credit reference agency* giving notice under section 159(2) of the *CCA* that it has removed an entry from the file kept by it about an *individual* or has amended such an entry (including where it has amended an entry by removing information from it); or
- (2) the *credit reference agency* giving notice under section 159(4) of the *CCA* that it has received a notice under section 159(3) requiring it to add a notice of correction to the file and intends to comply with the notice; or
- (3) the expiry of the period specified in an order of the *FCA* or the Information Commissioner under section 159(5) of the *CCA* as the period within which the order is to be complied with;

the *credit reference agency* must give notice of the particulars specified in *CONC 9.2.2R* to each *person* to whom at any time since the relevant date it has furnished information relevant to the financial standing of the *individual* concerned.

[**Note:** regulation 5 of SI 1977/330]

9.2.2 R The particulars referred to in *CONC 9.2.1R* are:

- (1) in relation to information included in any entry which has been removed or amended or which is referred to in a notice of correction:
 - (a) particulars of any entry which has been removed from the file and a statement that it has been removed;
 - (b) particulars of any entry which has been amended and of the amendment, or of the entry as amended; and
 - (c) particulars of the entry, together with a copy of the notice of correction; and
- (2) where the information did not include the entry which has been removed or amended or which is referred to in a notice of correction, but which (whether in the form of a rating or opinion or otherwise) was based in whole or in part on any such entry and has been, or falls

to be, modified by reason of the removal, amendment or notice:

- (a) particulars of the modified information; and
- (b) a statement that the information has been modified by reason of the removal, amendment or notice, as the case may be.

- 9.2.3 R In this section, "the relevant date" means the date one *month* immediately preceding the receipt by the *credit reference agency* from the *individual* of the request, particulars and fee referred to in section 158(1) of the *CCA*, or the request and fee (if a fee is payable) referred to in section 7(2) of the Data Protection Act 1998 and, if applicable, the receipt of any further information requested by the *credit reference agency* referred to in section 7(3) of that Act.

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 10.2.5R(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* is presently obliged to pay under the *credit 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 10.2.5R (2)*;
- for the period until (subject to *CONC 10.2.13R*) 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 10.2.5R(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:

$$(1) \quad 0.25\% \times £5,000,000 = £12,500; \text{ and}$$

$$(2) \quad 0.15\% \times £5,000,000 = £7,500.$$

- 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:

$$(1) \quad 0.25\% \times £5,000,000 = £12,500; \text{ and}$$

$$(2) \quad 0.15\% \times £3,000,000 = £4,500.$$

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* 10.3.2R).
- (2) In arriving at its calculation of its prudential resources a *firm* must deduct certain items (see *CONC* 10.3.3R).

- 10.3.2 R Table: Items which are eligible to contribute to the prudential resources of a firm

	Item	Additional explanation														
1	<i>Share capital</i>	This must be fully paid and may include: <table border="1"> <tr> <td>(1)</td> <td>ordinary <i>share capital</i>; or</td> </tr> <tr> <td>(2)</td> <td>preference <i>share capital</i> (excluding preference <i>shares</i> redeemable by shareholders within two years).</td> </tr> </table>	(1)	ordinary <i>share capital</i> ; or	(2)	preference <i>share capital</i> (excluding preference <i>shares</i> redeemable by shareholders within two years).										
(1)	ordinary <i>share capital</i> ; or															
(2)	preference <i>share capital</i> (excluding preference <i>shares</i> redeemable by shareholders within two years).															
2	Capital other than <i>share capital</i> (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i>)	<p>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>:</p> <table border="1"> <tr> <td>(1)</td> <td>capital account, that is the account: <table border="1"> <tr> <td>(a)</td> <td>into which capital contributed by the <i>partners</i> is paid; and</td> </tr> <tr> <td>(b)</td> <td>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: <table border="1"> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(ii)</td> <td>the partnership is otherwise dissolved or wound up; and</td> </tr> </table> </td> </tr> </table> </td> </tr> <tr> <td>(2)</td> <td>current accounts according to the most recent financial statement.</td> </tr> </table> <p>For the purpose of the calculation of capital resources in respect of a <i>defined benefit occupational pension scheme</i>:</p>	(1)	capital account, that is the account: <table border="1"> <tr> <td>(a)</td> <td>into which capital contributed by the <i>partners</i> is paid; and</td> </tr> <tr> <td>(b)</td> <td>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: <table border="1"> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(ii)</td> <td>the partnership is otherwise dissolved or wound up; and</td> </tr> </table> </td> </tr> </table>	(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: <table border="1"> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(ii)</td> <td>the partnership is otherwise dissolved or wound up; and</td> </tr> </table>	(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	(i)	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	(ii)	the partnership is otherwise dissolved or wound up; and	(2)	current accounts according to the most recent financial statement.
(1)	capital account, that is the account: <table border="1"> <tr> <td>(a)</td> <td>into which capital contributed by the <i>partners</i> is paid; and</td> </tr> <tr> <td>(b)</td> <td>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: <table border="1"> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(ii)</td> <td>the partnership is otherwise dissolved or wound up; and</td> </tr> </table> </td> </tr> </table>	(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: <table border="1"> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(i)</td> <td>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</td> </tr> <tr> <td>(ii)</td> <td>the partnership is otherwise dissolved or wound up; and</td> </tr> </table>	(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	(i)	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	(ii)	the partnership is otherwise dissolved or wound up; and					
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(i)	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															
(ii)	the partnership is otherwise dissolved or wound up; and															
(2)	current accounts according to the most recent financial statement.															

		(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)	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> .	
		For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:	
		(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> :
		(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 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 R Table: Items which must be deducted in arriving at prudential resources

1	<i>Investments in own shares</i>
2	<i>Investments in 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 in 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>

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 <i>firm</i> 's prudential resources (see <i>CONC</i> 10.3.2R)
b	=	Items 1 - 5 in the Table of items which must be deducted in arriving at a <i>firm</i> 's prudential resources (see <i>CONC</i> 10.3.3R)

- 10.3.6 G *CONC* 10.3.5R 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 <i>firm</i> need not exclude any of its subordinated loans/debts pursuant to <i>CONC</i> 10.3.5R. 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 <i>firm</i> should exclude £20,000 of its subordinated loans/debts when calculating its prudential resources. Therefore total prudential resources will be £80,000.	

11 Cancellation

11.1 The right to cancel

11.1.1 R Except as provided for in *CONC* 11.1.2R or where *PROF* 5.4.1R(1) or (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 *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* 11.1.1R, 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);
 - (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 11.1.1R* where the *lender* has not complied with *CONC 2.7.6R* (requirement to communicate terms and conditions etc), unless the *distance contract* falls with the exception in *CONC 2.7.12R* and the *firm* has complied with the requirements of that *rule*.
- (3) There is a right to cancel under *CONC 11.1.1R* where the circumstances in *CONC 2.7.12R* apply but the *lender* has not supplied all the contractual terms and conditions and information as required in *CONC 2.7.12R*.

11.1.3 G Section 66A of the *CCA* (right to withdraw) does not apply to an agreement for *credit* exceeding £60,260, 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 11.1.1R*.

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 2.7.6R* or under *CONC 2.7.12R*, 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* 11.1.1R, 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* 2.7.2R to *CONC* 2.7.5R (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 2.7.2R* to *CONC 2.7.5R*). 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 11.1.11R*. 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

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.

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 11.2.3R*.

Amend the following as shown.

12 Requirements for firms with interim permission for credit-related regulated activities

...

12.1.2 G The purpose of these *rules* is to provide that certain provisions of the *Handbook* or of a Regulatory Guide:

...

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 12.1.4R* to this chapter:

...

12.1.4 R ...

Module	Disapplication or modification
Senior Management Arrangements, Systems and Control sourcebook (<i>SYSC</i>)	...
Fees manual (<i>FEES</i>)	...
<u>Threshold Conditions (<i>COND</i>)</u>	<u>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).</u>

	<p><u>Note 1</u></p>	<p><u>A firm is treated as having an interim permission on and after 1 April 2014 to carry on credit related regulated activity 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 credit related regulated activities for which it has an interim permission, the threshold conditions 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 threshold conditions in relation to the credit related regulated activities for which it has an interim permission for which the regulator is responsible. The guidance in COND should be read accordingly.</u></p>
<p><u>Client Assets (CASS)</u></p>		<p><u>CASS does not apply:</u></p> <p><u>(1) to a firm with only an interim permission; or</u></p> <p><u>(2) with respect to credit-related regulated activity for which a firm has an interim permission that is treated as a variation of permission;</u></p> <p><u>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.</u></p>
<p><u>Supervision manual (SUP)</u></p>		<p><u>SUP 3 (Auditors), SUP 10A (FCA Approved persons) and SUP 12 (Appointed representatives) (see Note 2) do not apply:</u></p> <p><u>(1) to a firm with only an interim permission; or</u></p> <p><u>(2) with respect to a credit-related regulated activity for which a firm has an interim permission that is treated as a variation of permission.</u></p>
	<p><u>Note 2</u></p>	<p><u>A firm may not be a principal in relation to a regulated activity for which it has interim permission. A firm with interim permission may, however, be an appointed representative in relation to a regulated activity which it does not have interim permission to carry on (article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).</u></p>

<p><u>SUP 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements) applies:</u></p> <p>(1) <u>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);</u></p> <p>(2) <u>with the modifications to SUP 6.3.15D and SUP 6.4.5D set out in paragraph 1.2 of this Schedule.</u></p>	
<p>Note 3</p>	<p><u>If a firm 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>.</u></p>
<p><u>SUP 11 (Controllers and close links) does not apply to a firm with only an <i>interim permission</i> (see Note 4).</u></p>	
<p>Note 4</p>	<p><u>A firm 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).</u></p>
<p><u>For a firm with only an <i>interim permission</i></u></p> <p>(1) <u>SUP 15.5.1R, SUP 15.5.2G, SUP 15.5.4R, SUP 15.5.5R are modified so that the words “reasonable advance”, “and the date on which the <i>firm</i> intends to implement the change of name” and “and the date of the change” are omitted; and</u></p> <p>(2) <u>SUP 15.7.1R, SUP 15.7.4R and SUP 15.7.5AR 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.</u></p> <p>(3) <u>If in a notification to the FCA the <i>firm</i> is required to enter its FRN number it must include its <i>interim permission</i> number.</u></p>	
<p><u>SUP 16 (Reporting requirements) does not apply to a firm with only an <i>interim permission</i>.</u></p>	
<p><u>SUP 16.11 and SUP 16.12 apply to a firm, which was an <i>authorised person</i> immediately before 1 April 2014, with an <i>interim permission</i> that is treated as a variation of <i>permission</i> with respect to <i>credit-related regulated activity</i> as if the</u></p>	

	<u>changes to SUP 16.11 and SUP 16.12 effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made.</u>
<u>Disputes Resolution: Complaints sourcebook (DISP)</u>	<u>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.</u>
	<u>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 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.</u>
<u>Consumer Credit sourcebook (CONC)</u>	<u>CONC 10 (Prudential requirements for debt management firms) does not apply:</u> <u>(1) to a firm with only an interim permission; or</u> <u>(2) with respect to credit-related regulated activity for which a firm has an interim permission that is treated as a variation of permission.</u>
<u>Perimeter Guidance manual (PERG)</u>	<u>For a firm only with an interim permission, PERG 5.11.13G 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)”.</u> <u>Article 59A enables a firm with only an interim permission which would be able to benefit from article 72B of the Regulated Activities Order, but for carrying on the new consumer credit regulated activities to continue to do so.</u>

- 12.1.5 D A firm with interim permission wishing to make an application to vary its interim permission by removing a regulated activity from those to which the interim permission relates or cancel its interim permission must apply using the online Consumer Credit Interim Permissions system available on the FCA’s website.

After CONC 12 insert the following new provisions. The text is not underlined.

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 the Data Protection Act 1998 and the Data Protection Principles, 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 or 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 communication or 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'.

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 A *firm* in *CONC* 14.1.2R 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.
- 14.1.4 R Where a *firm* appoints an agent in accordance with *CONC* 14.1.2R 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*.

15 Second charge lending

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 *Handbooks*. For example, *CONC* 7 applies to matters concerning arrears, default and recovery (including repossession) and applies generally to agreements to which this chapter applies. This chapter sets out specific requirements and *guidance* that apply in relation to agreements secured on *land*. *Regulated mortgage contracts* and *regulated home purchase plans* are not *regulated credit agreements* and 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 3.3.1R* 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.
[Note: paragraph 3.2 of *SCLG*]
- 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*.
[Note: paragraph 3.8 of *SCLG*]
- 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*;
[Note: paragraph 2.1 of *SCLG*]
 - (2) disclose any features of the prospective *credit agreement* which carry a particular risk to the *customer*;
[Note: paragraph 3.4 of *SCLG*]
 - (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;
[Note: paragraph 3.4 of *SCLG*]
 - (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
[Note: paragraphs 3.6 and 4.4 of *SCLG*]
 - (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.
[Note: paragraph 3.6 of *SCLG*]
- 15.1.6 G Where appropriate, the disclosure required by *CONC 15.1.4R* should be explained orally to the *customer*.
[Note: paragraph 3.4 of *SCLG*]

- 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.
[Note: paragraph 3.5 of *SCLG*]
- 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;
[Note: paragraph 4.2 of *SCLG*]
 - (2) take reasonable steps to ensure the *customer* has understood the nature of the obligations the *customer* will take on and the resulting risks;
[Note: paragraph 3.5 of *SCLG*]
 - (3) encourage the *customer* to obtain independent advice; and
[Note: paragraphs 2.1 and 4.2 of *SCLG*]
 - (4) permit the *customer* an adequate opportunity to seek and obtain such advice.
[Note: paragraph 2.1 of *SCLG*]
- 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*]
 - (2) the *firm* is required under *CONC* 5.2.2R(1) to assess the potential for commitments under the agreement to adversely impact the *customer's* financial situation.
[Note: paragraphs 1.14 and 4.1 of the *ILG*]
- 15.1.10 G In accordance with *PRIN* 9 (customer: relationships of trust):
- (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.

[**Note:** paragraph 3.14 of *SCLG*]

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.

[**Note:** paragraph 4.3 of *SCLG*]

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.

[**Note:** paragraph 4.4 of *SCLG*]

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.

[**Note:** paragraph 4.5 of *SCLG*]

15.1.14 G Where a *firm* considers taking action to repossess a *customer's* home, it should, where permitted, establish contact with the holder of any charges in priority to the *firm's* charge to minimise adverse impacts on the *customer*.

[**Note:** paragraph 6.2 of *SCLG*]

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.

[**Note:** paragraph 6.5 of *SCLG*]

TP 1 Transitional provisions: introduction to TP2

Application		
1.1	R	These transitional provisions apply to:
		(a) a <i>firm</i> which has a <i>Part 4A permission</i> for a <i>credit-related regulated activity</i> ;
		(b) a <i>firm</i> which is treated as having a <i>Part 4A permission</i> or a variation of permission for a <i>credit-related regulated activity</i> by virtue of article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment)(No 2) Order 2013; and
		(b) an <i>incoming firm</i> which carries on a <i>credit-related regulated activity</i> .
Purpose		
1.2	G	The <i>FCA</i> is aware that the introduction of <i>CONC</i> will impose an additional compliance burden on <i>firms</i> , even when there is an underlying continuity of policy. The <i>FCA</i> wishes to lighten that burden in a manner consistent with its regulatory objectives and the principles of good regulation under the <i>Act</i> . The following <i>rules</i> give <i>firms</i> additional time after 1 April 2014 to complete their preparations for the impact of certain provisions in <i>CONC</i> .
Definitions		
1.3	R	In these transitional provisions the following words are to have the meaning given to them below:
		"corresponding rule" means a provision or guidance set out, as they stand on 31 March 2014, in:
		the guidance issued by the Office of Fair Trading entitled "Debt collection: OFT guidance for businesses engaged in the recovery of consumer credit debts" (OFT664rev2);
		the guidance issued by the Office of Fair Trading entitled "Irresponsible lending: OFT guidance for creditors" (OFT1107);
		the guidance issued by the Office of Fair Trading entitled "Debt management (and credit repair services) guidance" (OFT366rev);
		the guidance issued by the Office of Fair Trading entitled "Credit brokers and intermediaries: OFT guidance for brokers, intermediaries and the consumer credit and hire businesses which employ or use their services" (OFT1388);
		the guidance issued by the Office of Fair Trading entitled "Mental capacity: OFT guidance for creditors" (OFT1373);

		the guidance issued by the Office of Fair Trading entitled “Guidance on sections 77, 78 and 79 of the Consumer Credit Act 1974: the duty to give information to debtors and the consequences of non-compliance on the enforceability of the agreement” (OFT1272);
		the guidance issued by the Office of Fair Trading entitled “Second charge lending – OFT guidance for lenders and brokers” (OFT1105);
		Part 4 of the CCA, including as applied by section 151 of the CCA;
		sections 55A, 55B, 74A, 74B, 81, 82A, 115 and 160A of the CCA;
		The Consumer Credit (Conduct of Business) (Credit References) Regulations 1977 (S.I. 1977/330);
		The Consumer Credit (Payments Arising on Death) Regulations 1983 (S.I. 1983/1554);
		The Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983 (S.I. 1983/1565);
		The Consumer Credit (Content of Quotations) and Consumer Credit (Advertisements)(Amendments) Regulations 1999 (S.I. 1999/2725);
		The Electronic Commerce (EC Directive) Regulations 2002 (S.I. 2002/2013);
		The Financial Services (Distance Marketing) Regulations 2004 (S.I. 2004/2095);
		the Consumer Credit (Advertisements) Regulations 2004 (S.I. 2004/1484) and 2010 (S.I. 2010/1970);
		that is substantially similar in purpose and effect to the relevant provision in <i>CONC</i> .
		a “credit firm” means a <i>firm</i> which has or is treated as having a <i>Part 4A permission</i> for a <i>credit-related regulated activity</i> ;
		an “EEA credit firm” means an <i>incoming firm</i> which carries on a <i>credit-related regulated activity</i> ;
		“transitional period” means the period starting on 1 April 2014 and finishing at midnight at the end of 30 September 2014.

TP 2 Transitional provisions in relation to corresponding rules

(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
2.1	CONC, to the extent there is a corresponding rule	R	(1)	A <i>credit firm</i> and an <i>EEA firm</i> with respect to carrying on a <i>credit-related regulated activity</i> will not contravene a <i>rule</i> in <i>CONC</i> to the extent that, on or after 1 April 2014, it is able to demonstrate that it has complied with the corresponding rule, with any necessary modification to take account of the coming into force of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 and the Financial Services Act 2012 (Consumer Credit) Order 2013.	The transitional period	1 April 2014
2.2		G	(1)	In order to benefit from the transitional provision, a <i>credit firm</i> or an <i>EEA firm</i> must ensure that the corresponding rule referred to in TP 1.3R with which it complies is substantially similar in purpose and effect to the provision in <i>CONC</i> to which it relates.		
			(2)	For the assistance of <i>firms</i> , <i>CONC</i> includes notes which indicate particular <i>rules</i> or guidance for which there is a corresponding rule. <i>Firms</i> may wish to refer to these notes but in doing so should understand that they are not intended to be exhaustive and are produced merely as		

				<p>a guide.</p> <p><i>Firms</i> are advised that should they wish to take advantage of the transitional provisions set out in this section, the onus is on the <i>firm</i> to be able to demonstrate that in any given case it has in fact complied with the corresponding rules.</p>		
			(3)	<p><i>Firms</i> will have noted that they should treat the corresponding rules as modified to the extent necessary to ensure that the provision can operate effectively notwithstanding the enactment of the Order in TP 1.1R. <i>Firms</i> will need to adopt a common-sense approach in interpreting the corresponding rules and modify them accordingly. For example, references in such rules to the OFT should be read as if they referred to the <i>FCA</i>.</p>		

TP3 Transitional provisions in relation to high cost short term credit

(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
3.1	CONC 3.4 (risk warnings)	R	CONC 3.4 (apart from in relation to an <i>electronic communication</i>) does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.2	CONC 6.7.20R (information)	R	CONC 6.7.20R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30	1 April 2014

	sheets)			June 2014	
3.3	<i>CONC</i> 6.7.23R (repeat refinancing)	R	<i>CONC</i> 6.7.23R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.4	<i>CONC</i> 7.6.12R (continuous payment authority)	R	<i>CONC</i> 7.6.12R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.5	<i>CONC</i> 7.6.13R (continuous payment authority)	R	<i>CONC</i> 7.6.13R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.6	<i>CONC</i> 7.6.14R (continuous payment authority)	R	<i>CONC</i> 7.6.14R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014

TP 4 Transitional provisions in relation to operating an electronic system in relation to lending

(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
4.1	Adequate explanations requirements	R	<i>CONC</i> 4.3.3G, 4.3.4R and 4.3.5R do not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.2	Creditworthiness requirements	R	<i>CONC</i> 5.5 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.3	Arrears notice for	R	<i>CONC</i> 7.17 does not apply	From 1 April	1 April

	fixed sum credit		until 1 October 2014.	2014 until the end of 30 September 2014	2014
4.4	Arrears notice for running account credit	R	<i>CONC</i> 7.18 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.5	Default sums notice	R	<i>CONC</i> 7.19 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.6	Right to withdraw from P2P agreement	R	<i>CONC</i> 11.2 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014

TP 5 Transitional provisions for prudential provisions in relation to debt management firms

(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
5.1	<i>CONC</i> 10.3.3R	R	A <i>firm</i> can calculate its prudential resources without deducting items 2 and 3 in <i>CONC</i> 10.3.3R	From 1 April 2014 to 31 March 2017	1 April 2014
5.2	<i>CONC</i> 10.3.5R	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 <i>CONC</i> 10.3.3 R)	From 1 April 2014 to 31 March 2017	1 April 2014
5.3	<i>CONC</i> 10.3.6G	G	The <i>guidance</i> at <i>CONC</i> 10.3.6G should be read in the light of <i>TP</i> 5. 2	From 1 April 2014 to 31 March 2017	1 April 2014

TP6 Transitional provisions for financial promotions and communications in relation to catalogues etc.

(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
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

Sch 1 Record keeping requirements

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
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 <i>CCA</i> 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 agreement</i> or <i>consumer hire agreement</i> .	Accurate and adequate data (including in respect of debt and repayment history) in relation to <i>individuals</i> owing, or treated as owing, money under <i>credit agreements</i> or <i>consumer hire agreements</i> .	When a <i>firm</i> is notified in relation to an <i>individual</i> whom it is to pursue for recovery of a debt.	Not specified.
7.13.7R	An <i>individual</i> not being the <i>borrower</i> under a <i>credit agreement</i> or <i>consumer hire agreement</i> .	Record that the <i>individual</i> is not the <i>borrower</i> and should not be pursued for debt.	Date on which the <i>firm</i> is aware of true state of affairs.	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 <i>CONC</i> 11.1.1R.	Adequate record of use of right to cancel by <i>consumer</i> .	Date of exercise.	3 years.
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Sch 2 Notification and reporting requirements (if any)

	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
G	<i>CONC</i> 10.2.14R	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

Sch 3 Fees and other required payment

Not used

Sch 4

Not used

Sch 5 Rights of action for damages

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 <i>Act</i> (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 <i>Act</i> . 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.

			Right of action under section 138D			
Chapter/ Appendix	Section/ Annex	Paragraph	For private person?	Removed?	For other person?	
The clear, fair and not misleading <i>rule</i> in <i>CONC</i> 3.3.1R			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 <i>CONC</i> 10			No	Yes, <i>CONC</i> 10.1.6R	No	
All other <i>rules</i> in <i>CONC</i>			Yes (Notes 2 & 3)	No	No	
Notes						
(1)	<i>CONC</i> 3.3.1R(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 <i>rule</i> does not give rise to a right of action under section 138D of the <i>Act</i> .					
(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 <i>regulated activity</i> of the kind specified by article 36H of that Order or article 64 of that Order so far as relevant to that activity.					

Sch 6 Rules that can be waived

6.1	As a result of section 138A of the <i>Act</i> (Modification or waiver of rules) the <i>FCA</i> has power to waive all its <i>rules</i> , other than <i>rules</i> made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the <i>Act</i> . However, if the <i>rules</i> incorporate requirements laid down in European directives, it will not be possible for the <i>FCA</i> to grant a waiver that would be incompatible with the <i>UK's</i> responsibilities under those directives.
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