

Chapter 2

Conduct of business standards: general

2.5 Conduct of business: credit broking

Conduct of business: credit broking

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

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

Conduct of business

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

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

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

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

[Note: paragraph 4.22 of *CBG*]

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

[Note: paragraph 3.9I of *CBG*]

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

[Note: paragraph 3.9r of *CBG*]

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

[Note: paragraph 3.9y of CBG]

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

[Note: paragraph 3.9q of CBG]

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

[Note: paragraph 3.9u of CBG]

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

[Note: paragraph 3.9w of CBG]

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

[Note: paragraph 3.9x of CBG]

2.5.4

G

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

Conduct of business: credit references

2.5.5

R

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

[Note: regulation 3 of SI 1977/ 330]

2.5.6

R

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

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

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

[Note: regulation 4 of SI 1977/ 330]

Searching credit files

2.5.7

G

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

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

Unfair business practices: credit brokers

2.5.8

R

A *firm* must not:

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

[Note: paragraph 3.9a of CBG]

- (2) other than where:

- (a) [deleted]

- (b) [deleted]

- (c) [deleted]

- (ca) (i) the *firm* has obtained the contact details of a *customer* (C) in the course of the sale or negotiations for the sale of a product or service to C;

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

- (iii) C has been given a simple means of refusing (free of charge, except for the cost of the transmission of the refusal) the use of the contact details for the purposes of such direct marketing, at the time that the details were initially collected and, where C did not initially refuse the use of the details, at the time of each subsequent communication; or

- (d) the *firm* has previously explained that the following calls or *electronic communications* would be sent or made or caused to be sent or made by the *firm* and following that explanation C consented for the time being to such calls or communications;

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

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

[Note paragraph 3.9b of CBG]

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

[Note: paragraph 3.9c of CBG]

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

[Note: paragraph 3.9c of CBG]

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

[Note: paragraph 3.9f of CBG]

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

[Note: paragraph 3.9g of CBG]

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

[Note: paragraph 3.9h of CBG]

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

[Note: paragraph 3.9i of CBG]

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

[Note: paragraph 3.9j of CBG]

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

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

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

[Note: paragraph 4.26d of CBG]

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

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

[Note: paragraph 4.26e of CBG]

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

[Note: paragraph 4.26e of CBG]

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

[Note: paragraph 4.41k of CBG]

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

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

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

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

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

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

[Note: paragraph 4.26f of CBG]

- (15) [deleted]

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

[Note: paragraph 4.26g of CBG]

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

[Note: paragraph 4.26h of CBG]

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

[Note: paragraph 4.41h of CBG]

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

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

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

[Note: paragraph 4.17f of CBG]

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

[Note: paragraph 4.17c of CBG]

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

[Note: paragraph 3.9s of CBG]

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

[Note: paragraph 3.9t of CBG]

Guidance on unfair business practices

2.5.9

G

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

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

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

[Note: paragraph 6.19f of CBG]

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

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

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

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

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

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

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

[Note: paragraph 4.17f of CBG]

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

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

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

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

2.5.10 R In ■ CONC 2.5.8R (14):

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

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

2.5.11

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