

Chapter 4

Pre-contractual requirements

4.2 Pre-contract disclosure and adequate explanations

Application

4.2.1

R

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

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

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

4.2.2

G

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

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

Other disclosure requirements

4.2.3

G

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

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

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

4.2.4

G

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

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

Pre-contractual adequate explanations

4.2.5

R

- (1) Before making a *regulated credit agreement* the *firm* must:
 - (a) provide the *customer* with an adequate explanation of the matters referred to in (2) in order to place the *customer* in a position to assess whether the agreement is adapted to the *customer's* needs and financial situation;
 - (b) advise the *customer*:
 - (i) to consider the information which is required to be disclosed under section 55 of the *CCA*; and
 - (ii) where the information is disclosed in person, that the *customer* is able to take it away;
 - (c) provide the *customer* with an opportunity to ask questions about the agreement; and
 - (d) advise the *customer* how to ask the *firm* for further information and explanation.

[Note: section 55A(1) of *CCA*]
- (2) The matters referred to in (1)(a) are:
 - (a) the features of the agreement which may make the *credit* to be provided under the agreement unsuitable for particular types of use;
 - (b) how much the *customer* will have to pay periodically and, where the amount can be determined, in total under the agreement;
 - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the *customer* in a way which the *customer* is unlikely to foresee;
 - (d) the principal consequences for the *customer* arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon

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

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

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

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

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

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

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

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

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

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

- (6) Where the *regulated credit agreement* is an agreement under which a *person* takes an article in *pawn*:
- (a) the requirement in (1)(a) only relates to the matters in (2)(d) and (e); and
 - (b) the requirements in (1)(b) and (d) do not apply.

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

- (7) This *rule* does not apply to:
- (a) a *non-commercial agreement*;
 - (b) a *small borrower-lender-supplier agreement* for restricted-use credit

[Note: section 74(1) of CCA]

(8) [deleted]

(9) [deleted]

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

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

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

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

(1) the type of *credit* being sought;

(2) the amount and duration of *credit* to be provided;

the actual and potential costs of the *credit*;

(2B) the risk to the *customer* arising from the *credit* (the risk to the *customer* is likely to be greater the higher the total cost of the *credit* relative to the *customer's* financial situation);

(2C) the purpose of the *credit*, if the *lender* or (as the case may be) the *credit broker* knows what that purpose is;

(3) to the extent it is evident and discernible, the *customer's* level of understanding of the agreement, and of the information and the explanation provided about the agreement; and

(4) the channel or medium through which the *credit* transaction takes place.

[Note: paragraph 3.4 of *ILG*]

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

(2) In deciding whether it is appropriate to give separate explanations to each *customer*, and in determining the level and extent of explanation required for each *customer*, the *lender* or *credit broker* should consider the factors in ■ CONC 4.2.7G separately for each *customer*.

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

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

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

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

[Note: paragraph 3.10 of *ILG*]

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

[Note: paragraph 3.10 of *ILG*]

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

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

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

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

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

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

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

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

Adequate explanations in relation to particular regulated credit agreements

4.2.15

R

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

- (1) for *credit token agreements*:
 - (a) different rates of interest and different charges apply to different elements of the *credit* provided (for example, a higher cost of withdrawing cash);
 - (b) the implications of only making minimum *repayments*;
 - (c) interest rates or charges may be increased;
 - (d) where applicable, the interest rates may be increased based on the risks presented by the individual *customer*;
 - (e) except in relation to *retail revolving credit* and *BNPL agreements*, the limitations on any zero percentage or low interest or other introductory offer; and
 - (f) conditions on any balance transfers, including any fees and charges which may apply;
- (2) for *credit card cheques*, the higher associated costs relative to payment by credit card;
- (3) for *home credit loan agreements* and *high-cost short-term credit*, the effect of refinancing (within the meaning in ■ CONC 6.7.17 R) or otherwise extending the duration of the *credit* or of the *credit agreement*;
- (3A) for a *home credit loan agreement* that would refinance an existing *home credit loan agreement* and also involve an increase in the amount of principal outstanding, and where an alternative option could be entering into a separate *home credit loan agreement* with the *lender* for the amount of the additional principal, the information must include an explanation of the difference, if any, between the weekly amount payable and the *total amount repayable* for a refinanced loan as compared to the situation where the *borrower* enters into a separate, concurrent loan. If the regular period after which the next payment is due is not weekly but a different period, then the *lender* must refer to that other period.
- (4) for *bill of sale loan agreements*:
 - (a) the risk of losing the asset which is the subject of the bill of sale and the loss this could entail;
 - (b) that repossession can take place without a court order;
 - (c) that repossession may not clear the debt owed; and
 - (d) unlike in the case of *hire-purchase agreements* and *conditional sale agreements*, the *customer* is not protected under this arrangement from repossession of the asset where one third or more of the *total amount payable* has been paid off;
- (5) for *hire purchase agreements* and *conditional sale agreements*:

- (a) the *customer* does not own the *goods* until the sums required under the agreements have been paid, including any option to purchase fee and any other conditions have been satisfied;
 - (b) *goods* can be repossessed without a court order in the event of default, unless in relation to a *regulated credit agreement* the *customer* has paid a third or more of the *total amount payable*;
- (6) for a *credit agreement* which is used to consolidate existing debts of the *customer* (whether to the same *lender* or to another *person*) and where applicable in each case:
- (a) the effect of consolidating the debts will involve payment of a higher rate of interest or charges or both (if the relevant information about existing debts is known to the *lender* or *credit broker*);
 - (b) the effect of consolidating the debts will involve increasing the period required for repayment (if the relevant information about existing debts is known to the *lender* or *credit broker*); and
 - (c) the *credit agreement* would be secured on the *customer's* property;
- (7) for a *credit agreement* which includes a condition requiring a guarantor, the requirement for the *customer* to provide *security* in the form of a guarantee.
- (8) for *retail revolving credit* and *BNPL agreements*, the limitations that apply to any zero percentage or low interest, introductory or other promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of that interest or those charges and the amount of principal on which the interest would be charged. If, for example, failing to meet the conditions for the application of the offer would result in interest being charged at a higher rate, or from the date of the purchase of the *goods* or services or on the total purchase price of the *goods* or services without account being taken of *repayments* made during the offer period, this must be included in the adequate explanation.

[Note: paragraph 4.26c of *CBG*]

[Note: paragraph 3.13 of *ILG*]

4.2.16

G

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

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

- (2) The explanation in ■ CONC 4.2.15R(3A) should enable a *customer* to easily understand the different costs of refinancing as opposed to keeping the existing loan and taking out an additional concurrent

loan, for example by indicating whether the periodic instalments and/or the total amounts payable are higher or lower.

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

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

[Note: paragraph 3.6 (box) of ILG]

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

[Note: paragraph 3.8 (box) of ILG]

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

[Note: paragraph 3.15 (box) of ILG]

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

[Note: paragraph 3.9 (box) of ILG]

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

[Note: paragraph 3.12 of ILG]

Credit agreements where there is a guarantor etc

4.2.22

R

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

4.2.23

R

- (1) ■ CONC 4.2.22R does not apply to a *lender* if a *credit broker*, a *solicitor*, a *barrister*, (in Scotland) an *advocate*, or a relevant person has complied with that rule in respect of the agreement.
- (2) Before a *lender* concludes that ■ CONC 4.2.22R does not apply to it in relation to a *regulated credit agreement* by virtue of (1), the *lender* must take reasonable steps to satisfy itself that:
 - (a) an explanation complying with ■ CONC 4.2.22R(2) has been provided to the guarantor; and
 - (b) the following had been provided to the *person* giving the explanation, before the explanation was given:
 - (i) a copy of the agreement;
 - (ii) if the guarantee or the indemnity (or both) is contained in a document other than the agreement, a copy of that document; and

(iii) a copy of any other document or information in writing relating to the agreement which had been provided to the guarantor by the *lender* or the *credit broker*.

(3) In this *rule*, “relevant person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), and is not a solicitor, a barrister or (in Scotland) an advocate.

4.2.24

G

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

4