

Chapter 4

Pre-contractual requirements

4.3 Pre-contractual requirements and adequate explanations: P2P agreements

Application

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

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

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

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

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

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

Pre-contractual requirements

4.3.3A **R**

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

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

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

Adequate explanations

4.3.4

R

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

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

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

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

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

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

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

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

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

P2P agreements where there is a guarantor etc

4.3.8 **R**

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

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

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