

Chapter 5A

Cost cap for high-cost short-term credit



5A.5 Consequences of contravention of the cost caps

Application

5A.5.1

R

This section applies to:

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *debt administration*;
- (3) a *firm* with respect to *debt collecting*; or
- (4) a *firm* with respect to *operating an electronic system in relation to lending*.

Contravention of cost caps and unenforceability of agreements and obligations

5A.5.2

R

Where:

- (1) a *firm* enters into an agreement for *high-cost short-term credit* in contravention of a rule in ■ CONC 5A.2; or
- (2) a *firm* facilitates an *individual* becoming a borrower under an agreement for *high-cost short-term credit* in contravention of a rule in ■ CONC 5A.4; or
- (3) a *firm* within ■ CONC 5A.5.1 R (1) imposes a charge in contravention of a rule in ■ CONC 5A.3; or
- (4) a *firm* within ■ CONC 5A.5.1 R (4) imposes a charge on behalf of a lender in contravention of a rule in ■ CONC 5A.3; or
- (5) a *firm* within ■ CONC 5A.5.1 R (2) or ■ CONC 5A.5.1 R (3) on behalf of a *firm* within ■ CONC 5A.5.1 R (1) or ■ CONC 5A.5.1 R (4) imposes a charge in contravention of a rule in ■ CONC 5A.3:
 - (a) the agreement is unenforceable against the borrower; and
 - (b) the borrower may choose not to perform the agreement and if that is the case:
 - (i) at the written or oral request of the borrower, the *lender* must, as soon as reasonably practicable following the request and in any case within 7 days of the request, repay to the borrower any charges paid by the borrower under the

agreement or confirm by notice in writing to the borrower that there are no charges to pay;

- (ii) where the *lender* complies with (i), the borrower must repay any *credit* received by the borrower under the agreement to the *lender* within a reasonable period from the day on which the charges in (i) are received by the borrower or the day on which the notice of confirmation in (i) is received; and
- (iii) in any case, the *lender* must not demand payment of the sum in (ii) in less than 30 days from the day in (ii).

5A.5.3 **R** Where an agreement for *high-cost short-term credit* provides for or imposes one or more charges that alone or in combination exceed or are capable of exceeding an amount set out in **■ CONC 5A.2** or **■ CONC 5A.3**:

- (1) the agreement is unenforceable against the borrower to the extent that such a charge or such charges exceed or are capable of exceeding that amount; and
- (2) the borrower may choose not to perform the agreement to that extent and if that is the case at the written or oral request of the borrower, the *lender* must, as soon as reasonably practicable following the request and in any case within 7 *days* of the request, repay to the borrower any charges to the extent in (1) paid by the borrower under the agreement or confirm by notice in writing to the borrower that there are no charges to that extent to pay.

5A.5.4 **G** Once the *lender* has repaid the charges to the borrower or has confirmed there are no charges to repay the borrower is then under a statutory obligation to repay any *credit* received under the agreement.

5A.5.5 **G** What is a reasonable period for the borrower to repay the *credit* depends on the circumstances of the case, including the terms for repayment under the agreement. Where the agreement provided for repayment in instalments, the *firm* should consider issuing the borrower with a schedule for repayment under which the *firm* would collect the *credit* in instalments at the same periodic intervals as under the agreement.

5A.5.6 **G** *Firms* are reminded that Principle 6 applies to how they deal with borrowers in relation to repayment of the *credit* required by **■ CONC 5A.5.2 R**. The *FCA* would expect firms to take into account the financial situation of the borrower in considering what is a reasonable period for repayment.

5A.5.7 **G** **■ CONC 5A.5.3 R** is a residual provision that applies to a *firm* established in the *UK* which carries on *debt administration* or *debt collection*, but where the *rules* in **■ CONC 5A** do not apply to a *lender* because the *lender* is established outside the *UK* and provides *electronic commerce activities* into the *UK*. Where a borrower gives notice to the *lender* referred to in **■ CONC 5A.5.3 R**, only charges which exceed the amounts set out in **■ CONC 5A.2** or **■ CONC 5A.3** are void. The borrower remains under a contractual obligation to repay the *credit* received under the agreement and any charges under the agreement permitted by those provisions.