

Overdraft pricing

## Chapter 5C

# Overdraft pricing



## 5C.1 Application and purpose

### Purpose

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The purpose of this chapter is to:

- (1) require *firms* to implement and maintain overdraft charging structures that are simple, transparent and capable of easy comparison; and
- (2) forbid *firms* from obliging a *customer* to pay a rate of interest for an unarranged overdraft which exceeds the rate of interest for an arranged overdraft that is relevant to that *customer*.

### Who and what?

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- (1) Subject to (2), this chapter applies to a *firm* with respect to *consumer credit lending* and connected activities in relation to arranged overdrafts and unarranged overdrafts associated with personal current accounts.
- (2) This chapter does not apply to:
  - (a) a *firm* if all personal current accounts provided or offered by the *firm* are excluded accounts;
  - (b) a *firm* in respect of any personal current account which may be used for a currency other than a currency of the *United Kingdom*;
  - (c) a private bank; or
  - (d) a *credit union*.

### Where?

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5C.1.3

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This chapter applies to a *firm* with respect to activities carried on from an establishment maintained by it in the *United Kingdom*.

## 5C.2 Charges for overdrafts to be interest rates

### 5C.2.1

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- (1) A *firm* must not:
  - (a) enter into an agreement with a *customer* that provides for an arranged overdraft charge or an unarranged overdraft charge; or
  - (b) impose on a *customer* an arranged overdraft charge or an unarranged overdraft charge,  
unless the conditions in (2) to (7) are satisfied.
- (2) The charge must be a rate of interest expressed as a percentage applied on an annual basis to the relevant balance of arranged overdraft or unarranged overdraft (as the case may be).
- (3) The rate of interest that applies to any given balance of arranged overdraft relating to a personal current account must either be zero or the same as the rate of interest that applies to any other balance of arranged overdraft in respect of that personal current account.
- (4) The rate of interest that applies to any given balance of unarranged overdraft relating to a personal current account must either be zero or the same as the rate of interest that applies to any other balance of unarranged overdraft in respect of that personal current account.
- (5) A *firm* must not require a *customer* to pay more than one arranged overdraft charge or more than one unarranged overdraft charge arising out of the same event.
- (6) Where a *customer* has an arranged overdraft, in relation to a personal current account, to which a rate of interest above zero applies, any unarranged overdraft charge imposed on the *customer* in relation to that personal current account must also consist of a rate of interest computed, structured and presented in an identical manner (although the level of the rate of interest that applies to the unarranged overdraft may be lower).
- (7) If, in relation to an overdraft, a *firm* indicates to a *customer* that no interest is payable on the overdraft balance, or a tranche of the overdraft balance up to a specified amount, the *firm* must not have a contractual right to impose interest referable to that overdraft balance or tranche of the balance if it is exceeded, or depending on whether or not certain conditions are met.

## 5C.2.2

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- (1) The purpose of ■ CONC 5C.2.1R is to permit a *firm* to impose an arranged overdraft charge or an unarranged overdraft charge on a *customer* only if the charge takes the form of an annual rate of interest. Consistent with this, a *firm* is forbidden from imposing on a *customer* a fee for making available an arranged overdraft facility (unless the amount of credit made available under the facility exceeds £10,000).
- (2) ■ CONC 5C.2.1R does not affect an arranged overdraft charge or an unarranged overdraft charge, liability for which accrued before the date on which ■ CONC 5C.2.1R came into force. ■ CONC 5C.2.1R does affect, however, an arranged overdraft charge or an unarranged overdraft charge liability for which accrued on or after the date on which ■ CONC 5C.2.1R came into force, irrespective of whether the arranged overdraft facility was granted or the agreement for the personal current account was made before or after the date on which ■ CONC 5C.2.1R came into force.
- (3) There has to be a single, uniform contractual rate of interest in respect of an individual *customer* that applies to any amount of arranged overdraft balance (other than any part of the balance that is free). This means that a *firm* may not have a graduated overdraft charging structure, where different rates of interest apply to specified tiers or bands of arranged overdraft balance, even if a higher band or tier is described as being intended for occasional emergency borrowing, or where lower or higher rates are contingent on certain behaviour, such as making or maintaining certain amounts or frequencies of deposits. A *firm* should not, for instance, calculate an arranged overdraft charge using a rate of interest of 3 per cent per annum if the *customer* borrows £100 by way of arranged overdraft, but use a rate of interest of 5 per cent per annum if the *customer* borrows £300. A *firm* may, however, vary a rate of interest using a contractual power of variation if it is fair, valid and enforceable.
- (4) Similarly, there has to be a single, uniform contractual rate of interest in respect of an individual *customer* that applies to any amount of unarranged overdraft balance (other than any part of the balance that is free), although this rate of interest may be lower than that which applies to an arranged overdraft balance.
- (5) A *firm* is not prevented from providing in the terms and conditions of the overdraft that no interest is payable in respect of arranged overdraft balances or unarranged overdraft balances of up to specified amounts (sometimes described as “fee-free amounts” or “buffer zones”) where permitted by ■ CONC 5C.2.1R. The purpose of ■ CONC 5C.2.1R(7) is to prevent *firms* from offering fee-free amounts or buffer zones that are free only in certain circumstances. An example of a buffer zone that is not permitted is where no interest is payable if an unarranged overdraft balance does not exceed the upper threshold of the buffer zone, but where interest becomes payable in respect of the entire balance (including the part of the balance in the buffer zone) if the *customer* exceeds the threshold.
- (6) A *firm* is not prevented from waiving or reducing overdraft charges (in whole or in part) in appropriate circumstances (for example, where the *firm* is treating a *customer* with forbearance in line with other rules in this sourcebook).

- (7) ■ CONC 5C.2.1R does not prohibit the level of the single, uniform contractual rate of interest from differing from *customer to customer*, or between personal current accounts for the same *customer*.
- (8) (a) The definitions of an arranged overdraft charge and an unarranged overdraft charge are broad.
- (b) These definitions capture any charges that arise because a *customer* has used an overdraft, or that are triggered by - or the size of which are affected by - the fact that the personal current account has entered, remains in, or extended, a debit position.
- (c) If the agreement provides that a charge is payable by a *customer* in exchange for the creation or continuation of an arranged overdraft facility, whether or not the *customer* in fact uses the facility, this charge is also caught by the definition of an arranged overdraft charge unless the facility has a pre-agreed limit in excess of £10,000. A charge of this sort is often referred to as a “facility fee” and payable periodically, for example annually.
- (d) The definitions of an arranged overdraft charge and an unarranged overdraft charge are not limited to charges that are described as financial consideration for the provision of *credit*. They could include, for example, a charge that is expressed as being referable to the execution of the payment transaction, if the charge is payable only where the transaction results in the account being in an overdrawn position or remaining in such a position. A charge for a payment transaction that is payable irrespective of whether or not the current account has a credit balance or a debit balance is not, however, caught by these definitions.
- (e) The definitions also do not include charges for operating or maintaining a personal current account (as distinct from charges for granting or continuing to make available an arranged overdraft facility in connection with the account), provided that the incidence and amount of the charges are not affected by whether or how much the *customer* uses an overdraft. A monthly account charge could be an example of such a charge.
- (9) ■ CONC 5C.2 requires *firms* to use only a rate of interest expressed as a percentage applied on an annual basis to the relevant balance of arranged overdraft or unarranged overdraft. If interest is compounded, *firms* are free to choose the intervals at which they add arranged overdraft charges and unarranged overdraft charges to the principal balance, provided that the same compounding frequency is used in relation to the *customer’s* arranged overdraft and unarranged overdraft in respect of the same personal current account.
- (10) *Firms* are reminded of the obligation in ■ CONC 3.5.3R(1) to include a representative example (including the *representative APR*) in a *financial promotion* that indicates a rate of interest or an amount relating to the *cost of credit*. *Firms* are also reminded of the obligation in ■ CONC 3.5.7R(1) to include in a *financial promotion* a *representative APR* if the *financial promotion* states or includes certain matters. *Firms* are referred to the *guidance* in ■ CONC 3.5.6G(2) in relation to how the rate of interest in ■ CONC 3.5.5R(1) should be calculated for the purposes of the representative example in ■ CONC 3.5.3R(1).

- (11) In ■ CONC 5C.2.1R(1)(b), “impose” an arranged overdraft charge or an unarranged overdraft charge includes creating the contractual right to receive it, and relying on, or enforcing, the contractual right or purporting to do so.

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## 5C.3 Interest rates for unarranged overdrafts to be no more than the interest rates for arranged overdrafts

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## 5C.3.1

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- (1) A *firm* must not:
- (a) enter into an agreement with a *customer* that provides for payment by the *customer* of an unarranged overdraft charge; or
  - (b) impose on a *customer*, who enters into an unarranged overdraft, an unarranged overdraft charge, unless the charge satisfies the conditions in (2) or (3) (as applicable).
- (2) (a) This sub-paragraph applies where:
- (i) the *customer* concerned has an arranged overdraft in connection with the personal current account; and
  - (ii) interest can become payable on some or all of the balance of that arranged overdraft.
- (b) The rate of interest that applies to the unarranged overdraft must not exceed the rate of interest referred to in (a)(ii) that applies to the arranged overdraft.
- (a) This sub-paragraph applies where (2)(a) does not apply.
- (b) The *firm* must take reasonable steps to identify the type of personal current account provided by it (referred to in this sub-paragraph as the “comparable account”):
- (i) that bears closest resemblance to the personal current account held by the *customer*;
  - (ii) in connection with which an arranged overdraft can arise:
  - (ii) of an amount equivalent to the amount of the unarranged overdraft; and
  - (ii) that can attract the payment of interest; and
  - (iii) that has been made available to a significant number of its *customers*.
- (c) The rate of interest that applies to the unarranged overdraft must not exceed the relevant rate of interest identified in (d).
- (d) The relevant rate of interest for the purposes of (c) is:

- (i) where there is only one rate of interest that applies to arranged overdrafts connected to the comparable account, that rate; or
- (ii) where there are two or more rates of interest that apply to arranged overdrafts connected to the comparable account, the highest of those rates that is imposed on a not insignificant number of the *customers* to whom the account has been made available.

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If a *firm* imposes an unarranged overdraft charge in contravention of ■ CONC 5C.3.1R(1)(b), the obligation to pay the charge is unenforceable against the *customer* and the *customer* is entitled to recover any sum paid by, or on behalf of, the *customer* under the obligation imposed.

5C.3.3

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- (1) The purpose of ■ CONC 5C.3.1R is to forbid *firms* from charging a *customer* who borrows a particular amount using an unarranged overdraft facility more than they would have had to pay (disregarding any fee-free amount) if they had borrowed an equivalent amount using their arranged overdraft facility (or, if they do not have an arranged overdraft facility, the highest amount that would have been payable (disregarding any fee-free amount) by a not insignificant number of other *customers* if they had borrowed an equivalent amount under an arranged overdraft facility connected with a comparable personal current account).
- (2) In ■ CONC 5C.3.1R(1)(b), ■ CONC 5C.3.1R(3)(d)(ii) and ■ CONC 5C.3.2R, “impose” an unarranged overdraft charge includes creating the contractual right to receive it, and relying on, or enforcing, the contractual right or purporting to do so (“imposes” and “imposed” should be read accordingly).
- (3) ■ CONC 5C.3.1R does not affect an unarranged overdraft charge, liability for which accrued before the date on which ■ CONC 5C.3.1R came into force. ■ CONC 5C.3.1R does affect, however, an unarranged overdraft charge liability for which accrued on or after the date on which ■ CONC 5C.3.1R came into force, irrespective of whether the agreement was made before or after the date on which ■ CONC 5C.3.1R came into force.
- (4) A *firm* is not prevented by ■ CONC 5C.3.1R from charging a *customer* who borrows using an unarranged overdraft less than it charges the *customer* for using an arranged overdraft facility or from not charging for such borrowing.
- (5) The *rules* in ■ CONC 5C.3.1R (other than ■ CONC 5C.3.1R(1)(a)) and ■ CONC 5C.3.2R are made pursuant to section 137C of the *Act*.



## 5C.4 Impact of changes to charging structures

- 5C.4.1** **R** Where a *firm* makes a change to its charging structure or lending policies in response to the *rules* and *guidance* set out in ■ CONC 5C, the *firm* must ensure it considers the impact of that change on existing *customers*, including those with large arranged overdraft balances, and, where appropriate, treats such *customers* with forbearance and due consideration.
- 5C.4.2** **G**
- (1) A *firm* that makes changes as described in ■ CONC 5C.4.1R should, in accordance with *Principle 6*, have due regard to the interests of existing *customers* and treat them fairly. An example of such a change is a change in a *customer's* overdraft limit.
  - (2) *Firms* are reminded that the purpose of the *rules* in ■ CONC 5D is to require *firms* to identify and provide appropriate assistance to *customers* (including existing *customers* at the time ■ CONC 5C becomes applicable) with a pattern of repeat overdraft use.

## 5C.5 Interpretation

### 5C.5.1

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In this chapter:

- (1) An “arranged overdraft” is the running-account facility provided for in an *authorised non-business overdraft agreement* that is a *regulated credit agreement*.
- (2) An “arranged overdraft charge” is a charge that a *firm* is contractually entitled to levy:
  - (a) (by way of interest or otherwise) and that would not be due but for the fact that the *customer* has borrowed, or borrowed further or continues to borrow, using an arranged overdraft; or
  - (b) exclusively for making available to the *customer* an arranged overdraft with a pre-arranged limit of £10,000 or less, whether or not the *customer* borrows, borrows further or continues to borrow, using the arranged overdraft.
- (3) An “excluded account” is a personal current account that is offered on terms that:
  - (a) an agreement which provides authorisation in advance for the *customer* to overdraw on the account cannot arise; and
  - (b) either:
    - (i) the account cannot become overdrawn without prior arrangement; or
    - (ii) no charge is payable (by way of interest or otherwise) if the account becomes overdrawn without prior arrangement; and no charge is payable where the *firm* refuses a payment due to lack of funds.
- (4) A “personal current account” means an account, other than a current account mortgage, which is a payment account within the meaning of the *Payment Accounts Regulations* (see ■ CONC 5C.5.2G(1)).
- (5) A “private bank” is a *bank* or *building society*, or an operationally distinct brand of such a *firm*, over half of whose personal current account customers each had throughout the previous financial year net assets with a total value of not less than £250,000. For this purpose:
  - (a) net assets do not include:
    - (i) the value of the *customer’s* primary residence or any loan secured on that residence;

## 5C.5.2

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- (ii) any rights of the *customer* under a qualifying contract of insurance within the meaning of the *Regulated Activities Order*; and
  - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the *customer* or on retirement, and to which the *customer* (or the *customer's* dependents) are, or may be, entitled; and
- (b) “previous financial year” means the most recent period of one year ending with 31 March.
- (6) An “unarranged overdraft” is a *regulated credit agreement* that arises as a result of:
- (a) a personal current account becoming overdrawn in the absence of an arranged overdraft; or
  - (b) the *firm* making available to the *customer* funds which exceed the limit of an arranged overdraft.
- (7) An “unarranged overdraft charge” is a charge (by way of interest or otherwise) that a *firm* is contractually entitled to levy and that would not be due but for the fact that the *customer* has borrowed, borrowed further or continues to borrow, using an unarranged overdraft.

- (1) The definition of “personal current account” refers to the definition of a “payment account” under the *Payment Accounts Regulations*, that is: “an account held in the name of one or more consumers through which consumers are able to place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers, but does not include any of the following types of account provided that the account is not used for day-to-day payment transactions: savings accounts; credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt; current account mortgages or e-money accounts”. The *FCA* has issued guidance on this definition: see ‘FG16/6 – Payment Accounts Regulations 2015’.

[**Note:** <https://www.fca.org.uk/publications/finalised-guidance/fg16-6-payment-accounts-regulations-2015-definition-payment-account>]

- (2) The definition of excluded account captures personal current accounts where there cannot be a pre-arranged overdraft facility, there cannot be an unarranged overdraft to which interest or charges apply and charges for refusing a payment due to lack of funds cannot arise.

