

Overdraft pricing

Chapter 5C

Overdraft pricing

5C.2 Charges for overdrafts to be interest rates

5C.2.1

R

- (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.