

Chapter 7

Arrears, default and recovery (including repossessions)



7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors

7.3.1

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(1) In relation to *debt collecting* and *debt administration*, the definition of *customer* refers to an *individual* from whom the payment of a debt is sought; this would include where a *firm* mistakenly treats an *individual* as the *borrower* under an agreement and mistakenly or wrongly pursues the *individual* for a debt.

[Note: paragraph 1.12 of DCG]

(2) In relation to *debt collecting* and *debt administration*, the definitions of *customer* and *borrower* are given extended meanings to include, as well as those other people they generally include, a *person* providing a guarantee or indemnity under a *credit agreement* and also a *person* to whom rights and duties under the agreement are passed by assignment or operation of law. This reflects article 39M of the *Regulated Activities Order*.

(3) However, in accordance with ■ CONC 7.1.4R(4), with respect to *debt collecting*, the definitions of *customer* and *borrower* do not include the guarantor under a *credit agreement* that is an exempt agreement by virtue of article 60C(4A) of the *Regulated Activities Order*.

7.3.2

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Dealing fairly with customers in arrears or default

When dealing with *customers* in default or in arrears difficulties a *firm* should pay due regard to its obligations under *Principle 6* (*Customers' interests*) to treat its *customers* fairly.

[Note: paragraphs 7.12 of ILG and 2.2 of DCG]

7.3.2A

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Forbearance and due consideration

■ CONC 7.3.3G to ■ CONC 7.3.6G and ■ CONC 7.3.8G do not apply to the extent that the *firm* follows:

(1) the guidance entitled *Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance*, the guidance entitled *Personal loans and coronavirus: Payment Deferral Guidance*, the guidance entitled *Motor finance agreements and coronavirus: Payment Deferral Guidance*, the guidance entitled *High-cost short-term credit and coronavirus: Payment Deferral Guidance* or the

guidance entitled Rent-to-own, buy-now-pay-later and pawnbroking agreements and coronavirus: Payment Deferral Guidance; or

- (2) the part of the guidance entitled Coronavirus and customers in temporary financial difficulty: updated guidance for insurance and premium finance firms under the heading Payment Deferrals

except, in each case, where the guidance indicates that the *firm* should act in accordance with those *rules* or *guidance*.

7.3.3

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Where a *customer* under a *regulated credit agreement* fails to make an occasional payment when it becomes due, a *firm* should, in accordance with *Principle 6*, allow for such unpaid payments to be made within the original term of the agreement unless:

- (1) the *firm* reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the *total amount payable* to be *unsustainable* or otherwise cause a *customer* to be in financial difficulties; or

[Note: paragraph 4.7 of *ILG*]

- (2) the *firm* reasonably believes that terminating the agreement will mitigate such adverse consequences for the *customer* and before terminating the agreement it explains this to the *customer*.

7.3.4

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A *firm* must treat *customers* in default or in arrears difficulties with forbearance and due consideration.

[Note: paragraphs 7.3 and 7.4 of *ILG* and 2.2 of *DCG*]

7.3.5

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Examples of treating a *customer* with forbearance would include the *firm* doing one or more of the following, as may be relevant in the circumstances:

- (1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a *customer* provides evidence of financial difficulties and is unable to meet *repayments* as they fall due or is only able to make token *repayments*, where in either case the level of debt would continue to rise if interest and charges continue to be applied);

[Note: paragraph 7.4 (box) of *ILG*]

- (2) allowing deferment of payment of arrears:
 - (a) where immediate payment of arrears may increase the *customer's repayments* to an *unsustainable* level; or
 - (b) provided that doing so does not make the term for the *repayments* unreasonably excessive;
- (3) accepting token payments for a reasonable period of time in order to allow a *customer* to recover from an unexpected income shock, from a *customer* who demonstrates that meeting the *customer's* existing debts would mean not being able to meet the *customer's* priority

debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).

- 7.3.6** **G** Where a *customer* is in default or in arrears difficulties, a *firm* should allow the *customer* reasonable time and opportunity to repay the debt.
- [Note: paragraph 2.2 of DCG]
- 7.3.7** **G** [deleted]
- 7.3.7A** **G**
- (1) If a *customer* is in default or in arrears difficulties, the *firm* should, where appropriate:
 - (a) inform the *customer* that free and impartial debt advice is available from *not-for-profit debt advice bodies*; and
 - (b) refer the *customer* to a *not-for-profit debt advice body*.
 - (2) A *firm* may refer the *customer* to a *not-for-profit debt advice body* by, for example, providing the *customer* with a copy of the current arrears information sheet under section 86 of the CCA, or with the name and contact details of a *not-for-profit debt advice body* or *MoneyHelper*; or directly transferring the *customer's* call to a *not-for-profit debt advice body*.
 - (3) In addition, the *firm* may provide the *customer* with the name and contact details of another *authorised person* who has *permission* for *debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.
- 7.3.8** **G** An example of where a *firm* is likely to contravene *Principle 6* and **■ CONC 7.3.4 R** is where the *firm* does not allow for alternative, affordable payment amounts to repay the debt due in full, where the *customer* is in default or arrears difficulties and the *customer* makes a reasonable proposal for repaying the debt or a *debt counsellor* or another *person* acting on the *customer's* behalf makes such a proposal.
- [Note: paragraphs 7.16 of ILG and 3.7j of DCG]
- 7.3.9** **R** A *firm* must not operate a policy of refusing to negotiate with a *customer* who is developing a repayment plan.
- [Note: paragraph 3.9d (box) of DCG]
- 7.3.10** **R** A *firm* must not pressurise a *customer*:
- (1) to pay a debt in one single or very few *repayments* or in unreasonably large amounts, when to do so would have an adverse impact on the *customer's* financial circumstances;
- [Note: paragraph 7.18 of ILG]
- (2) to pay a debt within an unreasonably short period of time; or

		<p>[Note: paragraphs 3.7i of DCG and 7.18 of ILG]</p> <p>(3) to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.</p> <p>[Note: paragraph 3.7b of DCG]</p>
7.3.10A	G	<p>(1) An example of behaviour by or on behalf of a <i>firm</i> which is likely to contravene ■ CONC 7.3.10R and Principle 6 is pressurising a <i>customer</i> to raise funds to repay a debt by arranging the receipt of a lump sum from the <i>customer's pension scheme</i>.</p> <p>(2) <i>Firms</i> are also reminded of ■ PERG 12.6G which contains <i>guidance</i> on the <i>regulated activity of advising on conversion or transfer of pension benefits</i>.</p>
7.3.11	R	<p>A <i>firm</i> must suspend the active pursuit of recovery of a debt from a <i>customer</i> for a reasonable period where the <i>customer</i> informs the <i>firm</i> that a <i>debt counsellor</i> or another <i>person</i> acting on the <i>customer's</i> behalf or the <i>customer</i> is developing a repayment plan.</p> <p>[Note: paragraphs 7.12 of ILG and 3.7m of DCG]</p>
7.3.12	G	<p>A “reasonable period” in ■ CONC 7.3.11 R should generally be for thirty days where there is evidence of a genuine intention to develop a plan and the <i>firm</i> should consider extending the period for a further thirty days where there is reasonable evidence demonstrating progress to agreeing a plan. Where appropriate, a <i>firm</i> can take into account the period of time that the debt was subject to a <i>Debt Respite moratorium</i> when determining what is a reasonable period.</p> <p>[Note: paragraphs 7.12 (box) ILG and 3.7m of DCG]</p>
7.3.13	G	<p>A <i>firm</i> seeking to recover debts should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.</p> <p>[Note: paragraphs 7.16 (box) of ILG and 3.7k of DCG]</p>
		<p>Proportionality</p> <p>.....</p>
7.3.14	R	<p>(1) A <i>firm</i> must not take disproportionate action against a <i>customer</i> in arrears or default.</p> <p>[Note: paragraphs 7.14 (box) of ILG and 3.7t of DCG]</p> <p>(2) In accordance with (1) a <i>firm</i> must not, in particular, apply to court for an order for sale or submit a bankruptcy petition, without first having fully explored any more proportionate options.</p> <p>[Note: paragraph 7.14 (box) of ILG]</p>

7.3.15 **G** A *firm* should not make undue, excessive or otherwise unfair use of statutory demands (within the meaning of section 268 of the Insolvency Act 1986) when seeking to recover a debt from a *customer*.

[Note: paragraphs 7.10 of *ILG* and 3.7n of *DCG*]

Enforcement of debts

7.3.16 **G** A *firm* should not take steps to enforce a debt if it is aware that the *customer* is subject to a bankruptcy order (or in Scotland where sequestration is awarded in relation to the *customer*), a debt relief order or an individual voluntary arrangement (or, in Scotland, a protected trust deed or a Debt Arrangement Scheme).

[Note: paragraph 3.9h of *DCG*]

7.3.17 **R** A *firm* must not take steps to repossess a *customer's* home other than as a last resort, having explored all other possible options.

[Note: paragraphs 7.14 of *ILG* and 3.7t of *DCG*]

7.3.18 **R** A *firm* must not threaten to commence court action, including an application for a charging order or (in Scotland) an inhibition or an order for sale, in order to pressurise a *customer* in default or arrears difficulties to pay more than they can reasonably afford.

[Note: paragraphs 7.14 of *ILG* and 3.7i (box) of *DCG*]

7.3.19 **G** *Firms* seeking to recover debts under *regulated credit agreements* secured on *land* in England and Wales should have regard to the requirements of the relevant pre-action protocol (PAP) issued by the Civil Justice Council. The aims of the PAP are to ensure that a *firm* and a *customer* act fairly and reasonably with each other in resolving any matter concerning arrears, and to encourage more pre-action contact in an effort to seek agreement between the parties on alternatives to repossession. The Pre-action Protocol on Possession Proceedings applies to all mortgage repossession cases in Northern Ireland. The Home Owner and Debtor Protection (Scotland) Act 2010 provides for pre-action requirements to be placed on secured *lenders* in Scotland.

[Note: paragraphs 7.14 of *ILG* and 3.7s of *DCG*]