

Consumer Credit sourcebook

Schedule 5 Rights of action for damages

Sch 5

Sch 5.1	G	The table below sets out the <i>rules</i> in <i>CONC</i> contravention of which by an <i>authorised person</i> may be actionable under section 138D of the Act (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.
Sch 5.2	G	If a "Yes" appears in the column headed "For private person?", the <i>rule</i> may be actionable by a " <i>private person</i> " under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the <i>FCA</i> has removed the right of action under section 138D(2) of the Act. If so, a reference to the <i>rule</i> in which it is removed is also given.
Sch 5.3	G	The column headed "For other person?" indicates whether the <i>rule</i> may be actionable by a <i>person</i> other than a <i>private person</i> (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of <i>person</i> by whom the rule may be actionable is given.

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
		The clear, fair and not misleading <i>rule</i> in CONC 3.3.1 R	Yes (Notes 2 & 3)	In part (Note 1)	No
		The prudential <i>rules</i> for <i>debt management firms</i> and <i>not-for-profit debt advice bodies</i> in CONC 10	No	Yes, CONC 10.1.6 R	No
		All other <i>rules</i> in <i>CONC</i>	Yes (Notes 2 & 3)	No	No
Notes					
(1)	CONC 3.3.1 R (2) provides that if, in relation to a particular communication or <i>financial promotion</i> , a <i>firm</i> takes reasonable steps to ensure it complies with the clear, fair and not misleading <i>rule</i> , a contravention of that rule does not give rise to a right of action under section 138D of the Act.				
(2)	The definition of private person includes a "relevant recipient of credit" which is defined on article 60L of the <i>Regulated Activities Order</i> as "a partnership consisting of two or three persons not all of whom are bodies corporate, or an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership".				

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- (3) The definition of private person includes a person who is, by virtue of article 36J of that Order, to be regarded as a person who uses, may use, has or may have used or has or may have contemplated using, services provided by authorised persons in carrying on a *regulated activity* of the kind specified by article 36H of that Order or article 64 of that Order so far as relevant to that activity.