

Chapter 10

Annual Percentage Rate



10.4 Total charge for credit

Make up of the total charge for credit

10.4.1 **R** For the purposes of this chapter, the *total charge for credit* which may be provided under an actual or prospective agreement is the total (determined as at the date of the making of the agreement) of the charges specified in **■ MCOB 10.4.2 R** which apply in relation to the agreement, but excluding the charges specified in **■ MCOB 10.4.4 R**.

Items included in the total charge for credit

10.4.2 **R** The amounts of the following charges are included in the *total charge for credit* in relation to an agreement, with the exceptions in **■ MCOB 10.4.4 R**:

- (1) the total of the interest on the credit which may be provided under the agreement;
- (2) other charges at any time payable under the transaction by or on behalf of the *customer*, whether to the *firm* or any other person; and
- (3) a premium under a contract of insurance, payable under the transaction by the *customer*, where the making or maintenance of the contract of insurance is required by the *firm*:
 - (a) as a condition of making the agreement; and
 - (b) for the sole purpose of ensuring complete or partial repayment of the credit, and complete or partial payment to the *firm* of such of those charges included in the *total charge for credit* as are payable to him under the transaction, in the event of the death, invalidity, illness or unemployment of the *customer*;

notwithstanding that the whole or part of the charge may be repayable at any time or that the consideration therefore may include matters not within the transaction or subsisting at a time not within the duration of the agreement.

10.4.3 **G** (1) **■ MCOB 10.4.2 R** means, for example, that the following charges must be included within the *total charge for credit*:

- (a) any fee payable to a *mortgage intermediary* for arranging the contract (see **■ MCOB 10.4.2 R(2)**); and
- (b) any *higher lending charge*.

- (2) The *FCA* takes the view that charges required to be included within the *total charge for credit* should not be excluded on the basis of these charges being refundable in certain circumstances.
- (3) The *FCA* also takes the view that the *total charge for credit* and *APR* should not reflect the 'value' of any cashback or similar incentive linked to the contract.

Exclusions from the total charge for credit

10.4.4

R

- (1) The amounts of the following items are not included in the *total charge for credit* in relation to an agreement:
 - (a) any charge payable under the transaction to the *firm* upon failure by the *customer* to do or to refrain from doing anything which he is required to do or to refrain from doing;
 - (b) any charge:
 - (i) which is payable by the *firm* to any person upon failure by the *customer* to do or to refrain from doing anything which he is required under the transaction to do or to refrain from doing; and
 - (ii) which the *firm* may under the transaction require the *customer* to pay to him or to another person on his behalf;
 - (c) any charge relating to a regulated *restricted-use credit agreement* to finance a transaction between the *customer* and the *firm* (whether forming part of that agreement or not), or to finance a transaction between the *customer* and a person (the "supplier") other than the *firm* which would be payable if the transaction were for cash;
 - (d) any charge (other than a *fee* or commission charged by a credit-broker or *mortgage intermediary*) not within ■ MCOB 10.4.4 R(1)(c):
 - (i) of a description which relates to services or benefits incidental to the agreement and also to other services or benefits which may be supplied to the *customer*; and
 - (ii) which is payable to fulfil an obligation incurred by the *customer* under arrangements which were effected before he applied to enter into the agreement and are not arrangements under which the *customer* is bound to enter into any personal credit agreement;
 - (e) any charge under arrangements for the care, maintenance or protection of any land or goods (except as in ■ MCOB 10.4.4 R(2));
 - (f) charges for money transmission services relating to an arrangement for a current account under which the *customer* may, by cheques or similar orders payable to himself or to any other person, obtain or have the use of money held or made available by the *firm* and which records alterations in the financial relationship between the *firm* and *customer*, being charges which vary with the use made by the *customer* of the arrangement;
 - (g) any charge for a guarantee other than a guarantee:
 - (i) which is required by the *firm* as a condition of making the agreement; and

- (ii) the purpose of which is to ensure complete or partial repayment of the credit, and complete or partial payment to the *firm* of such of those charges included in the *total charge for credit* as are payable to him under the transaction, in the event of death, invalidity, illness or unemployment of the *customer*;
 - (h) charges for the transfer of funds (other than charges within ■ MCOB 10.4.4 R(1)(f)) and charges for keeping an account intended to receive payments towards the repayment of the credit and the payment of interest and other charges, except where the *customer* does not have reasonable freedom of choice in the matter and where such charges are abnormally high; this does not exclude from the *total charge for credit* charges for collection of the payments to which it refers, whether such payments are made in cash or otherwise; and
 - (i) a premium under a contract of insurance other than a contract of insurance referred to in ■ MCOB 10.4.2 R(3).
- (2) In the case of a charge within ■ MCOB 10.4.4 R(1)(e), (1) has effect only:
- (a) where under the arrangement:
 - (i) the services are to be performed if, after the date of the making of the agreement, the condition of the land or goods becomes or is in immediate danger of becoming such that the land or goods cannot reasonably be enjoyed or used; and
 - (ii) the charge will not accrue unless the services are performed; or
 - (b) where:
 - (i) provision of substantially the same description as that to which the arrangements relate is available under comparable arrangements from a person who is not the *firm* or a supplier or a credit-broker or a *mortgage intermediary* who introduced the *customer* and the *firm*;
 - (ii) the arrangements are made with a person chosen by the *customer*; and
 - (iii) (if, in accordance with the transaction, the consent of the *firm* or of a supplier or of the *mortgage intermediary* or credit-broker who introduced the *customer* and the *firm* is required to the making of the agreement), where the transaction provides that such consent may not be unreasonably withheld whether because no incidental benefit will or may accrue to the *firm* or to the supplier or to the credit-broker or to the *mortgage intermediary* or on any other ground.
- (3) References in ■ MCOB 10.4.4 R (2) to the *firm*, a supplier, a *mortgage intermediary* and a credit-broker include references to his near relative, his partner and a member of a group of which he is a member, to any person nominated by him or any such person in relation to the arrangements, and to a near relative of his partner; and 'near relative' means, in relation to any person, the husband,

wife, civil partner, father, mother, brother, sister, son or daughter of that person and 'group' means the person (including a company) having control of a company together with all the companies directly or indirectly controlled by him.