Consumer Credit sourcebook
## Consumer Credit sourcebook

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Chapter 1

Application and purpose and guidance on financial difficulties
1.1 Application and purpose

1.1.1 Application

(1) The Consumer Credit Sourcebook (CONC) is the specialist sourcebook for credit-related regulated activities.

(2) CONC applies as described in this chapter, unless the application of a chapter, section or a rule is described differently in the chapters, sections or rules in CONC.

1.1.2 Purpose

The purpose of CONC is to set out the detailed obligations that are specific to credit-related regulated activities and activities connected to those activities carried on by firms. These build on and add to the high-level obligations, for example, in PRIN, GEN and SYSC, and the requirements in or under the CCA.

1.1.3 Firms are reminded that other parts of the FCA Handbook and PRA Handbook also apply to credit-related regulated activities. For example, the arrangements for supervising firms, including applicable reporting obligations, are described in the Supervision manual (SUP) and the detailed requirements for handling complaints are set out in the Dispute Resolution: Complaints sourcebook (DISP). The Client Assets sourcebook (CASS) also contains rules about client money that apply in certain circumstances.

1.1.4 The Principles for Businesses: a reminder

The Principles for Businesses (PRIN) apply as a whole to firms with respect to credit-related regulated activities and ancillary activities in relation to credit-related regulated activities (see PRIN 3). In carrying on their activities, firms should pay particular attention to their obligations under:

(1) Principle 1 (a firm must conduct its business with integrity);

(2) Principle 2 (a firm must conduct its business with due skill, care and diligence);

(3) Principle 3 (a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems);

(4) Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly);
(5) Principle 7 (a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading);

(6) Principle 9 (a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment);

(7) Principle 10 (a firm must arrange adequate protection for clients’ assets when it is responsible for them); and

(8) Principle 11 (a firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice).
1.2 Who? What? Where?

1.2.1 Subject to CONC 1.2.8R and MCOB 14.1.5R, CONC applies to a firm with respect to carrying on credit-related regulated activities and connected activities, unless otherwise stated in, or in relation to, a rule.

1.2.2 A firm must:

(1) ensure that its employees and agents comply with CONC; and

(2) take reasonable steps to ensure that other persons acting on its behalf comply with CONC.

Guidance on appointed representatives

1.2.3 (1) Although CONC does not apply directly to a firm’s appointed representatives, a firm will always be responsible for the acts and omissions of its appointed representatives in carrying on business for which the firm has accepted responsibility (section 39(3) of the Act). In determining whether a firm has complied with any provision of CONC, anything done or omitted by a firm’s appointed representative (when acting as such) will be treated as having been done or omitted by the firm (section 39(4) of the Act).

(2) Firms should refer to SUP 12 (Appointed representatives), which sets out requirements which apply to firms using appointed representatives.

1.2.4 The credit-related regulated activities comprise consumer credit lending, credit broking, debt counselling, debt adjusting, debt administration, debt collecting, providing credit information services, providing credit references, operating an electronic system in relation to lending (but, other than in FEES and SUP, only insofar as it relates to a borrower or prospective borrower under a P2P agreement) and consumer hiring.

Where?

1.2.5 CONC, except in relation to CONC 3, applies with respect to activities carried on by a firm:

(1) with a customer whose habitual residence is in the UK from an establishment maintained by the firm (or its appointed representative) in the UK; or
(2) with a customer whose habitual residence is in the UK from an establishment of the firm (or its appointed representative) outside the UK.

### EEA territorial scope rule: compatibility with European law

**1.2.6**

1. CONC does not apply to an incoming ECA provider where, in providing a service, the provider is acting as such.
2. CONC applies to an outgoing ECA provider where, in providing a service, the provider is acting as such.
3. The territorial scope of CONC is otherwise modified to the extent necessary to be compatible with European law.
4. This rule overrides every other rule in this sourcebook.

**Note:** article 3(3) of, and the Annex to, the E-Commerce Directive

### Agreements secured on land

**1.2.7**

1. CONC does not apply to credit agreements secured on land, with some limited exceptions as set out in (3) and (4), below.
2. Agreements secured by a second or subsequent charge on the customer's home are, where regulated, governed by MCOB from 21 March 2016 (subject to transitional provisions allowing for the earlier adoption of MCOB). For detailed guidance on the regulation of secured lending, see ■ PERG 4.
3. The agreements secured on land to which CONC may apply include the following agreements (unless the agreement in question, or activity in relation to it, is otherwise exempt or excluded):
   - an agreement under which the borrower is a relevant recipient of credit (within the meaning of article 60L of the Regulated Activities Order) but is not one or more individuals or trustees; for example, a partnership comprising two or three partners, one but not all of the partners in which is a body corporate; and
   - an MCD article 3(1)(b) credit agreement secured on land, less than 40% of which is used as or in connection with a dwelling (whether by the borrower or anyone else) to the extent specified in ■ CONC 1.2.8R.
4. Broking in relation to the above agreements may be credit broking under article 36A of the Regulated Activities Order, whether the agreement is regulated or exempt. There are also some other secured credit agreements which are exempt, but the broking of which may still constitute credit broking, because some exemptions are disregarded by article 36A of the Regulated Activities Order. One example is a loan of more than £25,000 entered into wholly or predominantly for the purposes of a borrower's business and secured by a second or subsequent charge on the borrower's home: such a loan is not a regulated mortgage contract because it is a second charge business loan (as defined by article 61A of the Regulated Activities Order), and is an exempt agreement by virtue of article
1.2.8 Subject to CONC 1.2.10R:

(1) the following provisions of CONC apply to an MCD article 3(1)(b) creditor and to an MCD article 3(1)(b) credit intermediary:
   (a) CONC 1.2 and CONC 1.3 (application and purpose and guidance on financial difficulties);
   (b) CONC 2.2 (general principles for credit-related regulated activities);
   (c) CONC 2.7 (distance marketing);
   (d) CONC 2.8 (e-commerce); and
   (e) CONC 2.9 (prohibition of unsolicited credit tokens);

(2) the following provisions of CONC additionally apply to an MCD article 3(1)(b) creditor:
   (a) CONC 2.4 (credit references: conduct of business: lenders and owners);
   (b) CONC 2.10 (mental capacity guidance);
   (c) CONC 4.6 (pre-contract disclosure: continuous payment authorities);
   (d) CONC 6.4 (appropriation of payments);
   (e) CONC 6.5 (assignment of rights); and
   (f) CONC 6.7 (post contract: business practices); and

(3) the following provisions of CONC additionally apply to an MCD article 3(1)(b) credit intermediary (unless it is also acting as an MCD article 3(1)(b) creditor and carrying out a direct sale of the proposed article 3(1)(b) credit agreement):
   (a) CONC 2.5 (conduct of business: credit broking);
   (b) CONC 4.4.2R(4) (pre-contractual requirements: credit brokers);
   (c) CONC 5.4 (conduct of business: credit brokers), and the reference in that rule to credit broking includes a reference to advising on regulated credit agreements for the acquisition of land; and
   (d) CONC 6.8 (post contract business practices: credit brokers).

1.2.9 MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries are also subject to rules in MCOB, in accordance with MCOB 14.1.3R to MCOB 14.1.5R.

1.2.10 (1) CONC 1.2.8R and the rules applied by CONC 1.2.8R do not apply to an MCD article 3(1)(b) creditor or MCD article 3(1)(b) credit intermediary where the MCD article 3(1)(b) credit agreement would be an exempt agreement pursuant to article 60H(1) of the Regulated Activities Order but for:
(a) paragraph (1)(b)(ii)(bb) of article 60H of the Regulated Activities Order (which relates to high net worth borrowers); or
(b) article 60HA of the Regulated Activities Order (exemptions not permitted under the MCD).

(2) Agreements of the kind referred to in paragraph (1)(a) are excluded from CONC 1.2.8R and the rules applied by CONC 1.2.8R only if the rules in CONC App 1.4.1R to CONC App 1.4.4R, and the rules to which those rules refer, are complied with.

[Note: article 60H(2) of the Regulated Activities Order]

1.2.11 The purpose of CONC 1.2.10R(1)(a) is to enable a high net worth borrower under an MCD article 3(1)(b) credit agreement to waive the protections and remedies applicable to regulated credit agreements, except for those that transpose or implement the MCD. The MCD does not contain an exemption or derogation in respect of borrowing above a certain amount, unlike the Consumer Credit Directive: the EUR75,000 threshold in that Directive has been implemented in the form of the exemption for high net worth borrowers in article 60H of the Regulated Activities Order.

Application where home financing agreements are facilitated by a P2P platform

1.2.12 CONC does not apply to a P2P platform operator in circumstances where MCOB applies by virtue of MCOB 1.2.22R(1).

1.2.13 MCOB 1.2.22R(1) provides that a rule in MCOB that applies to a mortgage lender, a home purchase plan provider, a home reversion provider or a SRB agreement provider also applies to a P2P platform operator facilitating a regulated mortgage contract, home purchase plan, home reversion plan or regulated sale and rent back agreement where the lender, plan provider, reversion provider or agreement provider does not require permission to enter into the transaction. It applies subject to the provisions in MCOB 15.
1.3 Guidance on financial difficulties

1.3.1 In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:

(1) consecutively failing to meet minimum repayments in relation to a credit card or store card;

(2) adverse accurate entries on a credit file, which are not in dispute;

(3) outstanding county court judgments for non-payment of debt;

(4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;

(5) consecutively failing to meet repayments when due;

(6) agreement to a debt management plan or other debt solution;

(7) evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling.
Chapter 2

Conduct of business standards: general
2.1 Application

2.1.1 G This chapter applies as stated in the sections which follow.
2.2 General principles for credit-related regulated activities

2.2.1 This section applies to a firm with respect to credit-related regulated activities.

General principles

2.2.2 Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly. Examples of behaviour by or on behalf of a firm which is likely to contravene Principle 6 include:

(1) targeting customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason;

(2) subjecting customers to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion;

(3) not allowing customers who are unable to make payments a reasonable time and opportunity to meet repayments;

(4) taking steps to repossess a customer's home, other than as a last resort.

[Note: paragraph 7.14 of ILG]

[Note: paragraphs 2.3 of ILG, 2.2 of CBG and 2.3 of DMG]

Duty not to use misleading names

2.2.3 A firm must not carry on a credit-related regulated activity under a name which is likely to mislead customers about the status of the firm or the nature of its business, or in any other way.

[Note: section 25(1AD) of CCA]

2.2.4 (1) In relation to CONC 2.2.3 R, an example of where a name may mislead is if the average customer of the firm is likely to be misled by the name of the firm.

(2) Examples of the matters concerning a firm's status or the nature of its business about which its name may mislead customers include:

(a) the identity or nature of the firm;
(b) its commercial or profit-seeking status;
(c) its role, including any relationship with any other person;
(d) the extent of its authority;
(e) stating or implying that the firm is a public body or that it is related or connected in some way to a charitable, not-for-profit or governmental or local governmental organisation or to the courts;
(f) the nature of the products or services supplied;
(g) the cost of those products or services; and
(h) the scale of the business including its geographical scope.

(3) A firm which operates under a variety of trading names should take particular care to ensure that customers are not misled as to the identity of the firm, or the nature or scale of the firm’s business.

Effect on other rules and legislation

Any specific rule or piece of guidance in CONC is without prejudice to the application of PRIN, any other rules in the Handbooks, the CCA and secondary legislation made and things done under it, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Rights Act 2015 Part 8 of the Enterprise Act 2002 and any other applicable consumer protection legislation.

Restriction on marketing or providing an optional product for which a fee is payable

(1) A firm must not enter into an agreement with a customer under which a charge is, or may become, payable for an optional additional product unless the customer has actively elected to obtain that specific product.

(2) A firm must not impose a charge on a customer for an optional additional product under an agreement entered into on or after 1 April 2016 unless the customer actively elected to obtain that specific product before becoming bound to pay the charge.

(3) A firm must not invite or induce a customer to obtain an optional additional product for which a charge will be, or may become, payable if the firm knows or has reasonable cause to suspect that:
   (a) a contravention of (1) or (2) will take place with respect to the product; or
   (b) the person supplying the optional additional product will act in a way that would contravene (1) or (2) if that person were a firm.

(4) An omission by a customer is not to be regarded as an active election for the purposes of this rule.

(5) It is immaterial for the purposes of (3) whether or not the firm would or might be a party to the agreement for the optional additional product.
(6) A charge includes a financial consideration of any kind whether payable to the firm or any other person.

(7) An optional additional product is a good, service or right of any description (whether or not financial in nature) that a customer may obtain (or not, as the case may be) at his or her election in connection with or alongside a service the provision of which constitutes the carrying on of a credit-related regulated activity.

(8) (a) Where a customer is required to obtain a specific additional product, in order to receive the service the provision of which constitutes the carrying on of the credit-related regulated activity, the product is not an optional additional product.

(b) Where a customer is required to obtain a particular category of additional product (for example, a particular type of insurance), in order to receive the service the provision of which constitutes the carrying on of the credit-related regulated activity, and the customer is given a choice as to the seller or supplier from whom to obtain the product or which specific product to obtain, the product is an optional additional product.

(9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the firm or another person.

(10) A borrower-lender agreement enabling a borrower to overdraw on a current account, or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit, is not an optional additional product.

(11) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the customer actively elected before entering into the initial agreement or a preceding renewal to obtain the product.

(b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).

(c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.

(12) A customer may make an active election for the purposes of this rule through an intermediary in the sales process or through a person acting on behalf of the firm.

An example of an omission by a customer which is not to be regarded as an active election is the failure by the customer to change a default option such as a pre-ticked box on a website.
2.2.8  **Firms** are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.

2.2.9  **Firms** are reminded of the guidance on appointed representatives set out in CONC 1.2.3G.
2.3 Conduct of business: lenders and restrictions on provision of credit card cheques

Application

2.3.1 R This section applies to a firm with respect to consumer credit lending.

General conduct

2.3.2 R A firm must explain the key features of a regulated credit agreement to enable the customer to make an informed choice as required by CONC 4.2.5 R (adequate explanations).

[Note: paragraph 2.2 of ILG]

2.3.3 G CONC 6.7.2 R requires a firm to monitor a customer’s repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

2.3.4 R A firm must take reasonable steps to satisfy itself that any credit brokers with whom the firm deals are authorised persons or appointed representatives.

[Note: paragraph 1.27 of CBG]

Provision of credit card cheques

2.3.5 R (1) A firm may provide credit card cheques only to a customer who has asked for them.

[Note: section 51A(2) of CCA]

(2) A firm may provide credit card cheques only on a single occasion in respect of each request that is made.

[Note: section 51A(3) of CCA]

(3) The number of credit card cheques provided in respect of a request must not exceed three (or, if less, the number requested).

[Note: section 51A(4) of CCA]

(4) Where a single request is made for the provision of credit card cheques in connection with more than one credit-token agreement,
(2) and (3) apply as if a separate request had been made for each agreement.

[Note: section 51A(5) of CCA]

(5) Where more than one request for the provision of credit card cheques is made in the same document or at the same time:

(a) they may be provided in respect of only one of the requests, but

(b) if the requests relate to more than one credit-token agreement, in relation to each agreement they may be provided only in respect of one of the requests made in relation to that agreement.

[Note: section 51A(6) of CCA]

(6) This rule does not apply to credit card cheques provided in connection with a credit-token agreement that is entered into by the customer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the customer.

[Note: section 51B(1) of CCA]

(7) If a credit-token agreement includes a declaration made by the customer to the effect that the agreement is entered into as mentioned in (6), the agreement is treated for the purposes of (6) as having been so entered into.

[Note: section 51B(2) of CCA]

(8) The declaration in (7) must be in the form and content set out in CONC App 1 for the exemption relating to business.

(9) Paragraph (7) does not apply if, when the agreement is entered into

(a) the lender; or

(b) any person who has acted on behalf of the lender in connection with the entering into of the agreement;

knows, or has reasonable cause to suspect, that the agreement is not entered into as mentioned in (6).

[Note: section 51B(3) of CCA]

(10) Where an agreement has two or more lenders, references in (9) to the lender are to any one or more of them.

[Note: section 51B(5) of CCA]
2.4 Credit references: conduct of business: lenders and owners

Application

2.4.1 This section applies:

(1) to a firm with respect to consumer credit lending; or

(2) to a firm with respect to consumer hiring.

Disclosure of name and address of credit reference agencies consulted

2.4.2 (1) Not later than the lender ("L") informs a credit broker that L is not willing to make a regulated credit agreement, L must, unless L informs the customer directly that L is not willing to make the agreement, inform the credit broker of the name and address (including an appropriate e-mail address) of any credit reference agency from which L has, during the negotiations relating to the proposed agreement, applied for information about the financial standing of the customer.

[Note: regulation 2 of SI 1977/330]

(2) Not later than the owner ("O") informs a credit broker that O is not willing to make a regulated consumer hire agreement, O must, unless O informs the customer directly that O is not willing to make the agreement, inform the credit broker of the name and address (including an appropriate e-mail address) of any credit reference agency from which O has, during the negotiations relating to the proposed agreement, applied for information about the financial standing of the customer.

[Note: regulation 2 of SI 1977/330]

Searching credit files

2.4.3 A firm undertaking a credit reference search should not leave evidence of an application on a credit file where a customer is not yet ready to apply. Where practicable, firms should facilitate customers shopping around for credit by offering a ‘quotation search’ facility.

[Note: paragraph 3.13 (box 2) of ILG]
2.5 Conduct of business: credit broking

Conduct of business: credit broking

This section applies to a firm with respect to credit broking.

The scope of credit broking for the introducing activities (article 36A(a) to (c) of the Regulated Activities Order) covers regulated credit agreements and regulated consumer hire agreements. But additionally in relation to credit agreements it covers introductions concerning exempt agreements under articles 60C to 60H of that Order (other than agreements under article 60F of that Order (exempt agreements: exemptions relating to the number of repayments to be made)). Additionally in relation to consumer hire agreements, it covers exempt agreements articles 60O and 60Q of that Order.

Conduct of business

A firm must:

1. where it has responsibility for doing so, explain the key features of a regulated credit agreement to enable the customer to make an informed choice as required by CONC 4.2.5 R;

   [Note: paragraphs 4.27 to 4.30 of CBG and 2.2 of ILG]

2. take reasonable steps to satisfy itself that a product it wishes to recommend to a customer is not unsuitable for the customer's needs and circumstances;

   [Note: paragraph 4.22 of CBG]

3. advise a customer to read, and allow the customer sufficient opportunity to consider, the terms and conditions of a credit agreement or consumer hire agreement before entering into it;

   [Note: paragraph 3.9l of CBG]

4. before referring the customer to a third party which carries on regulated activities or to a claims management service (within the meaning of section 419A of the Act) or other services, obtain the customer's consent, after having explained why the customer's details are to be disclosed to that third party;

   [Note: paragraph 3.9r of CBG]
(5) before effecting an introduction of a customer to a lender or owner in relation to a credit agreement or consumer hire agreement, or before entering into such an agreement on behalf of the lender or owner, disclose (where applicable) the fact that the lender or owner is linked to the firm by being a member of the same group as the firm;

[Note: paragraph 3.9y of CBG]

(6) bring to the attention of a customer how the firm uses the customer’s personal data it collects, in a manner appropriate to the means of communication used;

[Note: paragraph 3.9q of CBG]

(7) provide customers with a clear and simple method to cancel their consent for the processing of their personal data;

[Note: paragraph 3.9u of CBG]

(8) at the request of a customer, disclose from where the customer’s personal data was obtained;

[Note: paragraph 3.9w of CBG]

(9) take reasonable steps not to pass a customer’s personal data to a business which carries on a credit-related regulated activity for which the business has no permission.

[Note: paragraph 3.9x of CBG]

2.5.4 A firm may comply with ■CONC 2.5.3R (6) by presenting to the customer a privacy notice. The Information Commissioner’s Office has prepared the Privacy Notices Code of Practice.

Conduct of business: credit references

2.5.5 Where a credit broker (“B”) is a negotiator (within the meaning of section 56(1) of the CCA), B must, at the same time as B gives notice to a customer, under section 157(1) of the CCA (which relates to the duty to disclose on request the name and address of any credit reference agency consulted by B) also give the customer notice of the name and address of any credit reference agency of which B has been informed under ■CONC 2.4.2 R.

[Note: regulation 3 of SI 1977/330]

2.5.6 Where a credit broker (“B”) is not a negotiator (within the meaning of section 56(1) of the CCA), B must, within seven working days after receiving a request in writing for any such information, which is made by a customer within 28 days after the termination of any negotiations relating to a regulated credit agreement or a regulated consumer hire agreement whether on the making of the agreement or otherwise, give to the customer notice of:

(1) the name and address of any credit reference agency from which B has during those negotiations applied for information about the financial standing of the customer; and
(2) the name and address of any credit reference agency of which B has been informed under CONC 2.4.2 R.

[Note: regulation 4 of SI 1977/330]

Searching credit files

2.5.7 G A firm undertaking a credit reference search should not leave evidence of an application on a credit file where a customer is not yet ready to apply. Where practicable, firms should facilitate customers shopping around for credit by offering a ‘quotation search’ facility”.

[Note: paragraph 3.13 (box 2) of ILG]

Unfair business practices: credit brokers

2.5.8 R A firm must not:

(1) make or cause to be made unsolicited calls to numbers entered on the register kept under regulation 25 or 26 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 or to a customer who has notified the firm not to call the number being used to call;

[Note: paragraph 3.9a of CBG]

(2) other than where:

(a) [deleted]

(b) [deleted]

(c) [deleted]

(ca) (i) the firm has obtained the contact details of a customer (C) in the course of the sale or negotiations for the sale of a product or service to C;

(ii) the direct marketing is in respect of the firm’s similar products and services only; and

(iii) C has been given a simple means of refusing (free of charge, except for the cost of the transmission of the refusal) the use of the contact details for the purposes of such direct marketing, at the time that the details were initially collected and, where C did not initially refuse the use of the details, at the time of each subsequent communication; or

(d) the firm has previously explained that the following calls or electronic communications would be sent or made or caused to be sent or made by the firm and following that explanation C consented for the time being to such calls or communications;

send or cause to be sent an electronic communication, for the purposes of marketing, to C, or make or cause to be made by means of an automated calling system (which is capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system, and transmitting sounds which are not live speech for reception by persons at some or
all of the destinations so called) a call to C, for the purposes of marketing;

[Note paragraph 3.9b of CBG]

(3) make or cause to be made by means of an automated calling system (see paragraph (2)) a call to a customer, for the purposes of marketing, after the firm has received a request from the customer to stop doing so;

[Note: paragraph 3.9c of CBG]

(4) send, or cause to be sent, an electronic communication to a customer, for the purposes of marketing, after the firm has received a request from the customer to stop doing so;

[Note: paragraph 3.9c of CBG]

(5) visit a customer at a time that is known to be, or reasonably likely to be, inconvenient or particularly undesirable to the customer;

[Note: paragraph 3.9f of CBG]

(6) refuse to end a visit to a customer or to leave the customer's home, when requested to do so;

[Note: paragraph 3.9g of CBG]

(7) unfairly request, suggest or direct a customer to make contact on a premium rate telephone number;

[Note: paragraph 3.9h of CBG]

(8) conduct a telephone call with a customer who has called on a premium rate number for an unreasonable period;

[Note: paragraph 3.9i of CBG]

(9) inappropriately offer a financial or other incentive or inducement to a customer to enter, immediately or quickly, into a credit agreement or consumer hire agreement to which this section applies;

[Note: paragraph 3.9j of CBG]

(10) effect an introduction to a lender or an owner or to another credit broker, where the firm has considered whether the customer might meet the relevant lending or hiring criteria and it is or should be apparent to the firm that the customer does not meet those criteria;

[Note: paragraph 3.9aa and 4.41i of CBG]

(11) suggest to a customer that an application for credit will be met in full when a lower amount may be offered;

[Note: paragraph 4.26d of CBG]

(12) secure more credit for a customer than was requested where the object of doing so is for, or can reasonably be concluded as having
been for, the personal gain of the firm or of a person acting on its behalf, rather than in the best interests of the customer;

[Note: paragraph 4.26e of CBG]

(12A) secure credit for a customer at a higher rate of interest than was requested, where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the firm or of a person acting on its behalf, rather than in the best interests of the customer;

[Note: paragraph 4.26e of CBG]

(13) give preference to the credit products of a particular lender where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the firm or of a person acting on its behalf, rather than in the best interests of the customer;

[Note: paragraph 4.41k of CBG]

(14) in relation to an insurance product or service (including, in particular, a payment protection product (the meaning of which is set out in CONC 2.5.10 R)) or other product or service linked to the credit agreement or consumer hire agreement (whether the product or service is optional or required as a condition of the credit agreement or consumer hire agreement):

(a) pressurise the customer to buy the product or service; or

[Note: paragraph 2.62, 2nd bullet of JGPPi]

(b) offer undue incentives to the customer to buy the product or service; or

[Note: paragraph 2.62, 2nd bullet of JGPPi]

(c) discourage or prevent the customer from seeking or obtaining the product or service from another source;

[Note: paragraph 4.26f of CBG]

(15) [deleted]

(16) encourage a customer to enter into a credit agreement which is secured in any way, to which this section applies, to replace an unsecured credit agreement or to consolidate other debts where the firm knows, or ought reasonably to know, that it is not in the best interests of the customer;

[Note: paragraph 4.26g of CBG]

(17) unfairly encourage a customer to increase, consolidate or refinance (which expression has the same meaning as in CONC 6.7.17 R) an existing debt to the extent that repayments under an agreement would be unsustainable for the customer;

[Note: paragraph 4.26h of CBG]
(18) encourage a customer to take out additional credit or to extend the term of an existing credit agreement where to do so is, or is reasonably likely to be, to the detriment of a customer;

[Note: paragraph 4.41h of CBG]

(19) charge a fee to a customer for effecting an introduction (directly or indirectly) to a lender or owner that provides a type of credit or hire of a different type to that:

(a) promised to the customer; or
(b) promoted by the firm to the customer; or
(c) which the firm is aware the customer is seeking;

unless the customer, after the firm has explained the reason for the fee, consents to such an introduction;

[Note: paragraph 4.17f of CBG]

(20) take a fee from a customer’s payment account without the customer’s express authorisation to do so (and “payment account” in this rule has the same meaning as in the Payment Services Regulations, being an account held in the name of one or more payment service users which is used for the execution of payment transactions);

[Note: paragraph 4.17c of CBG]

(21) unfairly pass a customer’s personal data to a third party without obtaining the customer’s consent to do so after having explained the reason for disclosing the data;

[Note: paragraph 3.9s of CBG]

(22) unfairly pass a customer’s personal data to a third party for a purpose other than that for which consent was sought and given.

[Note: paragraph 3.9t of CBG]

Guidance on unfair business practices

(1) It is likely to be an inappropriate offer of an inducement or incentive to enter into an regulated credit agreement or a regulated consumer hire agreement to state that the offer in relation to the agreement will be withdrawn or the terms and conditions of the offer will worsen if the agreement is not signed immediately or within a stated period after the communication, unless the firm’s offer on those terms and conditions will in fact be withdrawn or worsen in the period indicated to the customer.

[Note: paragraph 3.9j (box) of CBG]

(2) An example of unfairly requesting, suggesting or directing a customer to a premium rate telephone number is likely to be to do so in relation to a customer wishing to complain about the firm’s service or to request a refund, including, for example, under section 155 of the CCA.
[Note: paragraph 6.19f of CBG]

(3) It is unlikely to be reasonable for it to be necessary for a customer to make more than one telephone call exceeding 15 minutes to a firm to apply for credit. Where a longer call is required, the firm should ensure the call is not made on a premium rate telephone number.

[Note: paragraph 3.9i (box) of CBG]

(4) It is unlikely to be reasonable to request, suggest or direct a customer to call the firm repeatedly to check on the status of an application. A call to check on the status of an application should not last more than five minutes.

[Note: paragraph 3.9i (box) of CBG]

(5) A firm should disclose to a customer the amount, or likely amount, of any fee payable for its services as early as practicable in the firm's dealings with the customer. CONC 4.4.2 R requires a credit broker to disclose any such fee agreed with the customer in writing or in another durable medium.

[Note: paragraphs 2.2, 7th bullet, 3.7l and 4.9 of CBG]

(6) Where a firm makes an introduction of the type referred to in CONC 2.5.8R (19) the firm should ensure that the customer's consent is preceded by a full explanation of the key features and key risks of the product to which the introduction applies.

[Note: paragraph 4.17f of CBG]

(7) A customer's personal data must be processed fairly and lawfully and only for specified purposes. While it may be possible to pass special categories of personal data in specified and limited circumstances to certain third parties without the customer's consent where a condition of data protection legislation applies, a firm (other than where it is under a statutory obligation to pass personal data to a third party) should generally seek the customer's consent before passing such personal data to a third party.

[Note: paragraph 3.9t (box) of CBG]

(8) An example of where it is likely to be unfair for a credit broker in receipt of a customer's personal data to pass it to a third party, is where the personal data is passed on in return for a fee to a claims management firm, without the customer's consent.

Firms should note the effect of the call charges rule in GEN 7.

In CONC 2.5.8R (14):

(1) payment protection product means a product or feature of a product designed to offer customers short-term protection against potential loss of income, by providing the means for them to meet (or temporarily suspend) their financial obligations including repayments under a credit agreement. Payment protection products include, in particular, short term income protection, debt freeze or debt waiver;
(2) short-term income protection means a contract of insurance which provides a pre-agreed amount paid directly to the policyholder or the policyholder’s nominee in the event that the policyholder experiences involuntary unemployment or incapacity as a result of accident or sickness and may be combined with other forms of insurance cover or include other benefits and which:

(a) has a maximum time-limited benefit duration;

(b) is written for a term which is less than 5 years and not predetermined by the term of any credit agreement; and

(c) can be terminated by the insurer.

2.5.11 In CONC 2.5.8R (14) and CONC 2.5.10R (1), the protection offered by a payment protection product will typically be triggered by life events such as accident, sickness and/or unemployment, although other events may be covered where they impact on the consumer’s ability to meet certain financial commitments. The triggering events will usually be specified in the agreement but may be subject to some discretion (by the provider) at the time of claim.
2.5A Conduct of business: high-cost short-term credit (HCSTC) products on price comparison websites

Application

2.5A.1

This section applies to a firm which owns or operates a website that displays any terms on which high-cost short-term credit products are available from different lenders (referred to in this section as a “price comparison website”) and in relation to which it:

1. holds itself out as providing a price comparison service or a price service; or
2. describes itself in any way as a price comparison website or a price website; or
3. gives the impression in any way that the website is a price comparison website or a price website.

Listing details of high-cost short-term loans not based on commercial interests or relationships

2.5A.2

Where a firm lists information on the website it owns or operates concerning high-cost short-term credit products in order to enable a customer to compare any terms of those products, it must display the information in a way that neither the ranking of products nor the prominence of display of products is based (wholly or partly) on the firm’s commercial interests or its commercial relationship with any person.

HCSTC price comparison website functionality

2.5A.3

A firm must ensure that the price comparison website enables:

1. a customer to enter the value and duration of the customer’s desired loan when specifying the criteria for a search; and
2. a search to be made of the high-cost short-term credit products covered by the website and the results of the search to be displayed on the basis of only that information.

2.5A.4

1. A firm’s obligations under CONC 2.5A.3R(1) and (2) may be satisfied by enabling a customer to select from a reasonable range of options.
of values of loan or of durations of loan, when specifying the criteria for a search.

(2) What is a reasonable range of options for a search will depend, for example, on the breadth of value of loans or on the duration of loans that appear on the price comparison website. For example, it may be reasonable depending on the circumstances to allow a choice of bands of values or durations.

2.5A.5 In response to a request to perform a search for a high-cost-short-term credit product, the firm must ensure that the price comparison website:

(1) displays specific information relating to each loan covered by the website which corresponds to the search criteria entered by the customer as a separate result;

(2) ranks those results in order of total amount payable in accordance with CONC 3.5.5R(2), with the loan with the lowest total amount payable first and the highest last; and

(3) where two or more search results have the same total amount payable in accordance with (2), ranks the results according to another criterion permissible under CONC 2.5A.

A firm must ensure that neither:

(1) the ranking of the results of a search for a high-cost-short-term credit product, nor

(2) the prominence of the display of the results of such a search, nor

(3) whether a loan from a lender or credit broker, whose loans the firm arranges to compare or claims to compare, is displayed in the results of such a search,

is based (wholly or partly) on the firm’s commercial interests or its commercial relationship with any person.

(1) The information displayed on the price comparison website (for example, information concerning a loan, the results of a search or claims about the market coverage of the website) will need to comply with the financial promotion rules in CONC 3. In particular, it will need to comply with the requirement for a communication or a financial promotion to be clear, fair and not misleading. The results of a search also need to comply with the detailed rules in CONC 3.5. In particular, the results will require a representative example. The relevant items of the representative example must be representative of what the firm reasonably expects, at the date on which the financial promotion is made, to be representative of credit agreements to which the representative APR applies and which are expected to be entered into as a result of the promotion.

(2) The fact that a lender or credit broker pays a commission to the firm or pays for advertising or other marketing on the price comparison website (and the amount of any such commission or payment) should
not affect the ranking or prominence of display of the results of a search. Such payment should also not affect whether information about a loan from a lender or credit broker whose loans the firm arranges to compare or claims to compare appears in the results of a search.

(3) ■ CONC 2.5A.6R does not require the firm to compare loans from a lender or credit broker where it has not arranged to do so with that lender or credit broker nor where it does not claim to compare loans from that lender or credit broker.

(4) The firm should ensure that any information concerning a loan or any result of a search which relates to another firm’s credit broking service states prominently that:

(a) the firm referred to is a credit broker and is not a lender; or
(b) if the firm referred to is both a lender and a credit broker, the firm referred to is promoting its services as a credit broker and not its services as a lender.

(5) ■ CONC 2.5A.6R does not prevent the firm, once the initial results have been displayed in order of total amount payable, permitting a customer to re-sort the results of a search into a different order.

HCSTC price comparison website financial promotion

2.5A.8 R A firm must not display a financial promotion, other than the result of a search, in or between the results of a search.

2.5A.9 R A firm must ensure that the results of a search are clearly distinguishable from any other financial promotion.

2.5A.10 G A result of a search may include a hyperlink to the website of the lender or credit broker in question.

HCSTC price comparison website market coverage

2.5A.11 R A firm must list in one place on the price comparison website the brand names of lenders whose high-cost short-term credit products are displayed on the website.
2.6 Conduct of business: debt counselling, debt adjusting and providing credit information services

Application

2.6.1 This section applies to a firm with respect to:

(1) debt counselling; or
(2) debt adjusting; or
(3) providing credit information services.

Conduct of business

2.6.2 A firm must bring to the attention of a customer how the firm uses the customer's personal data it collects in a manner appropriate to the means of communication used.

[Note: paragraph 2.5e of DMG]

Unfair business practices

2.6.3 A firm must not:

(1) by any means, including during a visit to a customer, coerce or use pressure to sell its services;

[Note: paragraph 3.12o of DMG]

(2) take advantage of a customer's lack of knowledge or understanding of the law relating to consumer credit or to insolvency or to otherwise dealing with debts in order to sell its services;

[Note: paragraph 3.12o of DMG]

(3) in relation to a visit to a customer:

(a) make an appointment to visit or visit at a time which is unreasonable or inconvenient from the customer's point of view, unless the consumer expressly consents;

[Note: paragraph 3.15a of DMG]

(b) refuse to end the visit, refuse to leave the customer's home or ignore the customer's request not to return there;
[Note: paragraph 3.15b of DMG]

(c) make a visit which is unreasonably or unnecessarily long;

[Note: paragraph 3.15c of DMG]

(4) conduct a telephone call with a customer who has called on a premium rate number for an unreasonable period.

[Note: paragraph 3.18x of DMG]

Guidance on unfair business practices

(1) It is an offence for a person carrying on the business of debt counselling, debt adjusting or providing credit information services to canvass its services off trade premises under section 154 of the CCA. The definition of canvassing in section 153 of the CCA would include an unsolicited personal visit to a customer's home.

[Note: paragraph 3.13 of DMG]

(2) Where a long telephone call is required, the firm should ensure the call is not made on a premium rate number.

(3) It is unlikely to be reasonable for it to be necessary for a customer to make a call exceeding one hour to a firm in relation to debt counselling or debt adjusting. Where a call longer than 15 minutes is required for the firm to provide its service to the customer, the firm should ensure the call is not made on a premium rate phone number.

(4) It is unlikely to be reasonable for a call by the customer to check on the status of the customer’s case to last more than five minutes.

(5) Firms should note the effect of the call charges rule in GEN 7.
2.7 Distance marketing

Application

2.7.1 (1) Subject to (2) and (3), this section applies to a firm that carries on any distance marketing activity from an establishment in the UK, with or for a consumer in the UK or another EEA State.

(2) This section does not apply to an authorised professional firm with respect to its non-mainstream regulated activities.

(3) This section does not apply to an activity in relation to a consumer hire agreement.

The distance marketing disclosure rules

2.7.2 (1) Subject to (2), (3) and (4), a firm must provide a consumer with the distance marketing information (CONC 2 Annex 1R) in good time before the consumer is bound by a distance contract or offer.

[Note: regulation 7(1) of SI 2004/2095]

[Note: articles 3(1) and 4(5) of the Distance Marketing Directive]

(2) Where a distance contract is also a contract for payment services to which the Payment Services Regulations apply, a firm is required to provide to the consumer only the information specified in rows 7 to 12, 15, 16 and 20 of CONC 2 Annex 1R.

(3) Paragraph (1) and the requirement to provide the abbreviated distance marketing information (CONC 2 Annex 2R) in CONC 2.7.11 R do not apply to a distance contract which is also a credit agreement (other than an authorised non-business overdraft agreement) in respect of which the firm has disclosed the pre-contract credit information required by regulations 3, 4 or 5, as the case may be, and 7, of the disclosure regulations (information to be disclosed to a debtor before a regulated consumer credit agreement is made) in accordance with the disclosure regulations.

[Note: regulation 7(6) of SI 2004/2095]

(4) Paragraph (1) and the requirement to provide the abbreviated distance marketing information (CONC 2 Annex 2) in CONC 2.7.11 R do not apply to a distance contract which is also an authorised non-business overdraft agreement in respect of which:
(a) the firm has disclosed the information required by regulation 10(2) of the disclosure regulations (authorised non-business overdraft agreements) by means of the European Consumer Credit Information form in accordance with the disclosure regulations and, unless \[\text{CONC 2.7.12 R}\] would otherwise apply, a copy of the contractual terms and conditions;

(b) in the case of a voice telephony communication, the firm has:

(i) disclosed the information required by regulation 10(5) of the disclosure regulations in accordance with the disclosure regulations; and

(ii) provided a copy of the written agreement in accordance with section 61B(2)(b) of the CCA; or

(c) in the case of an agreement made using a means of distance communication, other than voice telephony communication, where a firm is unable to provide the information required by regulation 10(2) of the disclosure regulations, the firm has:

(i) provided a copy of the written agreement in accordance with section 61B(2)(c) of the CCA, and

(ii) unless \[\text{CONC 2.7.12 R}\] would otherwise apply, in relation to the prospective distance contract, provided information which accurately reflects the contractual obligations which would arise under the law presumed to be applicable to that contract.

\[\text{Note: regulation 7(6) of SI 2004/2095}\]

### 2.7.3

A firm must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent.

\[\text{Note: regulation 7(2) and (3) of SI 2004/2095}\]

\[\text{Note: article 3(2) of the Distance Marketing Directive}\]

### 2.7.4

When a firm makes a voice telephony communication to a consumer, it must make its identity and the purposes of its call explicitly clear at the beginning of the conversation.

\[\text{Note: regulation 7(4) of SI 2004/2095}\]

\[\text{Note: article 3(3)(a) of the Distance Marketing Directive}\]

### 2.7.5

A firm must ensure that information on contractual obligations to be communicated to a consumer during the pre-contractual phase accurately reflects the contractual obligations which would result from the law presumed to be applicable to the distance contract if that contract is concluded.

\[\text{Note: regulation 7(5) of SI 2004/2095}\]

\[\text{Note: article 3(4) of the Distance Marketing Directive}\]
2.7.6  
**A firm** must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (CONC 2.7.2 R to CONC 2.7.5 R) in a *durable medium*. That information must be made available and accessible to the consumer in good time before the consumer is bound by any *distance contract* or offer.

[Note: regulation 8(1) of SI 2004/2095]

[Note: articles 4(5) and 5(1) of the *Distance Marketing Directive*]

2.7.7  
(1) Activities in relation to a *consumer hire agreement* are not financial services within the meaning of the *Distance Marketing Directive* and do not fall within CONC 2.7. Instead such agreements fall within the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334) if they were made before 13 June 2014, or the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3135) if they were made on or after that date.

(2) A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another person provides the information, or communicates the terms and conditions, to the consumer on its behalf.

2.7.8  
The performance of the *distance contract* may only begin after the consumer has given approval.

[Note: article 7(1) of the *Distance Marketing Directive*]

2.7.9  
**Exception: successive operations**

In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the rules in this chapter only apply to the initial agreement.

[Note: regulation 5(1) of SI 2004/2095]

[Note: article 1(2) of the *Distance Marketing Directive*]

2.7.10  
(1) If there is no initial service agreement but the successive or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure rules (CONC 2.7.2 R to CONC 2.7.5 R) will only apply:

(a) when the first operation is performed; and

(b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[Note: regulation 5(2) of SI 2004/2095]

[Note: recital 16 and article 1(2) of the *Distance Marketing Directive*]
(2) In this section:

(a) "initial service agreement" includes the opening of a bank account or the making of a credit-token agreement;

(b) "operations" includes the deposit or withdrawal of funds to or from a bank account and payments by a credit card or a store card; and

(c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing retail banking service, does not constitute an "operation" but an additional contract to which the rules in this chapter apply.

[Note: regulation 5 of SI 2004/2095]

[Note: recital 17 of the Distance Marketing Directive]

Exception: voice telephony communications

In the case of voice telephony communication, and subject to the explicit consent of the consumer, only the abbreviated distance marketing information (CONC 2 Annex 2R) needs to be provided during that communication. However, unless another exception applies (such as the exemption for means of distance communication not enabling disclosure), a firm must still provide the distance marketing information (CONC 2 Annex 1R) in a durable medium that is available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.

[Note: regulation 7(4)(b) of SI 2004/2095]

[Note: articles 3(3)(b) and 5(1) of the Distance Marketing Directive]

Exception: means of distance communication not enabling disclosure

A firm may provide the distance marketing information (CONC 2 Annex 1R) and the contractual terms and conditions in a durable medium immediately after the conclusion of a distance contract, if the contract has been concluded at a consumer's request using a means of distance communication that does not enable the provision of that information in that form in good time before the consumer is bound by any distance contract or offer.

[Note: article 5(2) of the Distance Marketing Directive]

Exception: contracts for payment services

Where a distance contract covers both payment services and non-payment services, the exception in CONC 2.7.2R (2) applies only to the payment services aspects of the contract. A firm taking advantage of this exception will need to comply with the information requirements in Part 6 of the Payment Services Regulations.
Consumer’s right to request paper copies and change the means of communication

2.7.14 At any time during the contractual relationship, the consumer is entitled, at request, to receive the contractual terms and conditions on paper. The consumer is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[Note: regulation 8(2) and (4) of SI 2004/2095]
[Note: article 5(3) of the Distance Marketing Directive]

Unsolicited services

2.7.15 (1) A firm must not enforce, or seek to enforce, any obligations under a distance contract against a consumer in the event of an unsolicited supply of services. The absence of a reply does not constitute consent.

(2) This rule does not apply to the tacit renewal of a distance contract.

[Note: regulation 15 of SI 2004/2095]
[Note: article 9 of the Distance Marketing Directive]

Mandatory nature of consumer’s right

2.7.16 If a consumer purports to waive any of the consumer’s rights created or implied by the rules in this section, a firm must not accept that waiver, nor seek to rely on or enforce it against the consumer.

[Note: article 12 of the Distance Marketing Directive]

Contracts governed by law of a third party state

2.7.17 If a firm proposes to enter into a distance contract with a consumer that will be governed by the law of a country outside the EEA, the firm must ensure that the consumer will not lose the protection created by the rules in this section if the distance contract has a close link with the territory of one or more EEA States.

[Note: regulation 16(3) of SI 2004/2095]
[Note: articles 12 and 16 of the Distance Marketing Directive]
2.8 E-commerce

Application

2.8.1 R
This section applies to a firm carrying on an electronic commerce activity from an establishment in the UK with or for a person in the UK or another EEA State.

Information about the firm and its products or services

2.8.2 R
A firm must make at least the following information easily, directly and permanently accessible to the recipients of the information society services it provides:

(1) its name;
(2) the geographic address at which it is established;
(3) the details of the firm, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
(4) an appropriate statutory status disclosure statement (GEN 4 Annex 1 R), together with a statement which explains that it is on the Financial Services Register and includes its firm reference number;
(5) if it is a professional firm, or a person regulated by the equivalent of a designated professional body in another EEA State:
   (a) the name of the professional body (including any designated professional body) or similar institution with which it is registered;
   (b) the professional title and the EEA State where it was granted;
   (c) a reference to the applicable professional rules in the EEA State of establishment and the means to access them; and
   (d) where the firm undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the E-Commerce Directive]

2.8.3 R
If a firm refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the E-Commerce Directive]
A firm must ensure that commercial communications which are part of, or constitute, an information society service, comply with the following conditions:

1. The commercial communication must be clearly identifiable as such;
2. The person on whose behalf the commercial communication is made must be clearly identifiable;
3. Promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
4. Promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the E-Commerce Directive]

An unsolicited commercial communication sent by e-mail by a firm established in the UK must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the E-Commerce Directive]

Requirements relating to the placing and receipt of orders

A firm must (except when otherwise agreed by parties who are not consumers):

1. Give an ECA recipient at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
   a. The different technical steps to follow to conclude the contract;
   b. Whether or not the concluded contract will be filed by the firm and whether it will be accessible;
   c. The technical means for identifying and correcting input errors prior to the placing of the order; and
   d. The languages offered for the conclusion of the contract;
2. Indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
3. (When an ECA recipient places an order through technological means) acknowledge the receipt of the recipient’s order without undue delay and by electronic means; and
4. Make available to the ECA recipient appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and 11(1) and (2) of the E-Commerce Directive]
2.8.7 **R**
For the purposes of **CONC 2.8.6R (3)**, an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

2.8.8 **R**
Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

*[Note: article 10(3) of the *E-Commerce Directive]*

Exception: contract concluded by e-mail

2.8.9 **R**
The requirements relating to the placing and receipt of orders (**CONC 2.8.6 R**) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

*[Note: articles 10(4) and 11(3) of the *E-Commerce Directive]*
2.9 Prohibition of unsolicited credit tokens

Application

2.9.1 This section applies to any firm.

Prohibition

2.9.2 (1) A firm must not give a person a credit token if he has not asked for it.

[Note: section 51 of CCA]

(2) A request in (1) must be in a document signed by the person making the request, unless the credit-token agreement is a small borrower-lender-supplier agreement.

(3) Paragraph (1) does not apply to the giving of a credit token to a person:
   (a) for use under a credit-token agreement already made; or
   (b) in renewal or replacement of a credit token previously accepted by that person under a credit-token agreement which continues in force, whether or not varied.

2.9.3 [deleted]
2.10 Mental capacity guidance

Application

2.10.1 This section applies:

(1) to a firm;

(2) in relation to the following decisions:
   (a) granting credit under a regulated credit agreement;
   (b) significantly increasing the amount of credit under a regulated credit agreement; and
   (c) setting a credit limit for running account credit.

(1) The Mental Capacity Act 2005 sets out the legal framework concerning mental capacity for England and Wales. The Ministry of Justice has issued the Mental Capacity Act Code of Practice which, among other things, includes information on indications of mental capacity limitations and on how to assist people with making decisions.

(2) The Adults with Incapacity (Scotland) Act 2000 provides the framework in Scotland for safeguarding the welfare and managing the finances of adults who lack capacity due to mental disorder or inability to communicate.

(3) References in this section to a firm's knowledge, understanding, observation, suspicion, assumption or belief include that of the firm's employees, appointed representatives, agents and any others who act on behalf of the firm.

[Note: footnote 2 of MCG]

(4) In making a decision within CONC 2.10.1 G, a firm should consider the customer's individual circumstances.

[Note: paragraph 2.4 of MCG]

Mental capacity

2.10.3 Mental capacity is a person's ability to make a decision. Whether or not a customer has the ability to understand, remember, and weigh up relevant
information will determine whether the customer is able to make a responsible borrowing decision based on that information.

[Note: paragraph 2.1 of MCG]

2.10.4 A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity.

[Note: paragraph 3.1 of MCG]

2.10.5 Where a firm reasonably suspects a customer has, or may have, some form of mental capacity limitation which would constrain the customer’s ability to make a decision to borrow, the firm should not regard the customer as lacking capacity to make the decision unless the firm has taken reasonable steps without success to assist the customer to make a decision.

[Note: paragraph 3.2 of MCG]

2.10.6 Amongst the most common potential causes of mental capacity limitations are the following examples, a mental health condition, dementia, a learning disability, a developmental disorder, a neurological disability or brain injury and alcohol or drug (including prescribed drugs) induced intoxication.

[Note: paragraph 2.9 of MCG]

2.10.7 Where a firm understands or reasonably suspects a customer has a condition of a type in CONC 2.10.6 G, this does not necessarily mean that the customer does not have the mental capacity to make an informed borrowing decision. See also CONC 2.10.15 G.

[Note: paragraph 2.10 of MCG]

Indications that a person may have some form of mental capacity limitation

2.10.8 A firm is likely to have reasonable grounds to suspect a customer may have some form of mental capacity limitation if the firm observes a specific indication (behavioural or otherwise) that could be indicative of some form of limitation of the customer’s mental capacity. Examples (amongst others) of indications might include:

(1) where a firm has an existing relationship with a customer, the customer making a decision that appears to the firm to be unexpected or out of character;

(2) a person who is likely to have an informed view of the matter, such as a relative, close friend, carer or clinician raising a concern with the firm as to the capacity of the customer to make a decision about borrowing;

(3) the firm understands or has reason to believe the customer has been diagnosed as having an impairment which led to the customer not having had mental capacity for similar decisions in the past;
(4) the firm understands or has reason to believe the customer does not understand what the customer is applying for;

(5) the firm understands or has reason to believe the customer is unable to understand the information and explanations provided by the firm, in particular concerning the key risks of entering into the agreement;

(6) the firm understands or has reason to believe the customer is unable to retain information and explanations provided by the firm to enable the customer to make the decision to borrow;

(7) the firm understands or has reason to believe the customer is unable to weigh up the information and explanations provided by the firm to enable the customer to make the decision to borrow;

(8) the customer is unable to communicate a decision to borrow by any reasonable means;

(9) the customer being confused about the personal information that the firm requires, such as date of birth or address.

[Note: paragraphs 3.14 and 3.15 of MCG]

Practices and procedures

2.10.9 G

(1) A firm should not unfairly discriminate against a customer who it understands, or reasonably suspects, has a mental capacity limitation, in particular, by inappropriately denying the customer access to credit.

[Note: paragraph 4.8 of MCG]

(2) It would not be inappropriate not to grant credit nor significantly increase the amount of credit under an agreement nor set a credit limit for running account credit where the firm reasonably believes the agreement or decision would be voidable at the instance of the customer or the agreement is void.

2.10.10 G

(1) In accordance with Principle 6, firms should take reasonable steps to ensure they have suitable business practices and procedures in place for the fair treatment of customers who they understand, or reasonably suspect, have or may have a mental capacity limitation.

[Note: paragraph 4.1 of MCG]

(2) CONC 7.2.1 R requires firms to establish and implement arrears policies and procedures, which include policies and procedures for the fair and appropriate treatment of customers the firm understands or reasonably suspects of having mental capacity limitations.

2.10.11 G

A firm should document practices and procedures to set out the steps that it takes when it receives applications for credit from such customers.

[Note: paragraph 4.2 of MCG]

2.10.12 G

Where a firm understands, or reasonably suspects, a customer has or may have a mental capacity limitation the firm should use its business practices and procedures to:
(1) assist the customer, where possible, to make an informed borrowing decision; and

(2) ensure its lending decision is informed and responsible in the circumstances and mitigates the potential risks to the customer.

[Note: paragraphs 4.3 and 4.5 of MCG]

2.10.13 G As stated in the Mental Capacity Act Code of Practice, it is important to balance a person's right to make a decision with that person's right to safety and protection when they are unable to make decisions to protect themselves.

[Note: paragraph 4.5 (box) of MCG]

2.10.14 G Firms should present clear, jargon-free information in explaining credit agreements in a way that makes it as easy as possible for the customer to understand. Firms should consider ways to present information in alternative, more 'user-friendly' formats where it appears appropriate to do so, subject to compliance with the relevant statutory requirements.

[Note: paragraph 4.20 of MCG]

2.10.15 G Where a firm knows, or reasonably suspects, that a customer has or may have one of the conditions in CONC 2.10.6 G this could justifiably act as a trigger for the firm to consider the potential specific steps in giving effect to the firm's practices and procedures for assessing:

(1) whether or not the customer appears able to understand, remember, and weigh up the information and explanations provided and, when having done so, make an informed borrowing decision;

(2) whether the customer appears able to afford to make repayments under the credit agreement in a sustainable manner without adverse consequences to the customer's financial circumstances; and

(3) whether the credit the customer is seeking is clearly unsuitable (given the customer's individual circumstances and, to the extent that the firm is aware, the customer's intended use of the credit).

[Note: paragraphs 2.5 and 2.11 of MCG]

2.10.16 G Firms' practices and procedures should be designed to assist customers that firms understand have, or reasonably suspect of having, mental capacity limitations to overcome, to the extent possible, the effect of the limitations and place them, to the extent possible, on an equivalent basis to customers who do not have such limitations, to increase the likelihood of customers being able to make informed borrowing decisions.

[Note: paragraph 4.4 of MCG]

Allowing sufficient time for decisions

2.10.17 G Where a firm understands, or reasonably suspects, a customer has or may have a mental capacity limitation it should consider allowing the customer:
(1) sufficient time in the circumstances to weigh up the information and explanations the firm has given;

(2) sufficient time in the circumstances to make an informed borrowing decision;

(3) to defer a decision to borrow to a later date.

[Note: paragraphs 4.26, 4.27 and 4.28 of MCG]

Sustainability of borrowing

Where a firm understands, or reasonably suspects, a customer has or may have a mental capacity limitation it should apply a high level of scrutiny to the customer’s application for credit, in order to mitigate the risk of the customer entering into unsustainable borrowing.

[Note: paragraphs 4.32 and 4.33 of MCG]

(1) A firm should balance the risk of a customer taking on unsustainable borrowing against inappropriately or unnecessarily denying credit to a customer.

(2) Where a firm understands or reasonably suspects a customer has or may have a mental capacity limitation, it should undertake an appropriate and effective creditworthiness assessment (see CONC 5.2A) and it would be appropriate not to place over-reliance on information provided by the customer for the assessment.

[Note: paragraph 4.34 of MCG]

Where a firm understands, or reasonably suspects, a customer has or may have a mental capacity limitation the firm should take particular care that the customer is not provided with credit which the firm knows, or reasonably believes, to be unsuitable to the customer’s needs, even where the credit would be affordable.

[Note: paragraph 4.43 of MCG]
2.11 Remuneration and performance management policies, procedures and practices

Application

2.11.1 This section applies to a firm with respect to:

(1) credit-related regulated activity; and

(2) unregulated activity that is financed by a credit agreement in respect of which the firm is carrying on consumer credit lending or credit broking.

2.11.2 This section does not apply to a firm subject to:

(1) any of the remuneration provisions in SYSC 19A (IFPRU Remuneration Code) to SYSC 19F (Remuneration and performance management of sales staff); or

(2) remuneration provisions made by an EEA regulator pursuant to any of the following:
   (a) CRD; or
   (b) AIFMD; or
   (c) the UCITS Directive; or
   (d) MiFID.

Purpose

2.11.3 (1) The purpose of this section is to amplify the requirements in Principle 3 and SYSC 4.1.1R to ensure firms identify and effectively manage the risks to customers that may arise out of firms’ policies, procedures and practices for the remuneration or performance management of their employees, appointed representatives and such of their individual agents within the meaning of CONC 14 who interact with customers.

(2) This section does not apply to the commercial remuneration or commission arrangements between two or more separate firms.

(3) The risks this section addresses may arise out of a firm’s policies for remunerating its employees, appointed representatives or individual agents for performance in carrying on credit-related regulated
activities. Such risks may arise, for instance, where staff remuneration (for example, a bonus or commission) is determined in whole or in part by the volume or value of credit provided or debt collected. These risks may, in addition, arise where an individual’s formal (for example, annual appraisals) or informal (for example, day-to-day interactions with their line manager) performance management focuses on targets or measures of the volume or value of credit provided or debt collected.

(4) These risks may also arise out of a firm’s policies for remunerating such individuals for performance in carrying on unregulated activities that are financed by credit agreements in respect of which the firm is carrying on consumer credit lending or credit broking. An example is where a firm incentivises an individual to sell or supply goods or services the purchase of which may be financed (in whole or in part) by a credit agreement in respect of which the firm is carrying on credit broking or consumer credit lending. The use of incentives in these circumstances creates the risk that the individual may, for example, provide or arrange credit to fund purchases when it is not appropriate to do so.

(5) Nothing in this section requires a firm to act in a way that would be inconsistent with its obligations under employment or contract law.

Requirements

2.11.4  
(1) A firm must in relation to any risk of failure by the firm to comply with its obligations under the regulatory system arising from its remuneration or performance management policies, procedures and practices:

(a) establish, implement and maintain adequate policies and procedures designed to detect this risk; and

(b) put in place adequate measures and procedures designed to manage this risk.

(2) A firm must, when deciding how to comply with (1), take into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business.

Examples of measures and procedures to manage risks

2.11.5  
Examples of measures and procedures which firms might introduce, where appropriate, to manage the risks to which this section applies, include:

(1) undertaking monitoring of the nature of sales activities and debt collecting;

(2) collecting management information to enable the firm to monitor and identify trends or patterns in employee, appointed representative or individual agent behaviour that could be used to detect these risks;

(3) establishing procedures to ensure appropriate actions are taken if an employee, appointed representative or individual agent is found to have behaved inappropriately; and
(4) maintaining arrangements to ensure the approval, oversight and regular review of remuneration and performance management arrangements by an appropriate governance committee or senior management.

2.11.6 In relation to CONC 2.11.5G(1), where the activities of an employee, appointed representative or individual agent are monitored by that person’s manager, any potential conflicts of interest that arise should be adequately managed (for example, if the manager’s remuneration is affected by the volume or value of sales or of debt collected by that team member).

Non-Handbook guidance

2.11.7 A firm should also be aware of the finalised guidance entitled Staff Incentives, Remuneration and Performance Management in Consumer Credit. [Note: see https://www.fca.org.uk/publications/guidance-consultations/gc17-6-proposals-staff-incentives-and-performance-management]
## Distance marketing information

This Annex belongs to **CONC 2.7.2 R** (The distance marketing disclosure rules)

### Information about the firm

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>(1)</td>
<td>The name and the main business of the <em>firm</em>, the geographical address at which it is established and any other geographical address relevant for the <em>consumer’s</em> relations with the <em>firm</em>.</td>
</tr>
<tr>
<td>(2)</td>
<td>Where the <em>firm</em> has a representative established in the <em>consumer’s</em> EEA State of residence, the name of that representative and the geographical address relevant for the <em>consumer’s</em> relations with that representative.</td>
</tr>
<tr>
<td>(3)</td>
<td>Where the <em>consumer’s</em> dealings are with any professional other than the <em>firm</em>, the identity of that professional, the capacity in which he is acting with respect to the <em>consumer</em>, and the geographical address relevant to the <em>consumer’s</em> relations with that professional.</td>
</tr>
<tr>
<td>(4)</td>
<td>The particulars of the public register in which the <em>firm</em> is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (<em>GEN 4</em>), a statement that the <em>firm</em> is on the <em>Financial Services Register</em> and its firm reference number.</td>
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### Information about the financial service

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<table>
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<tbody>
<tr>
<td>(5)</td>
<td>A description of the main characteristics of the service the <em>firm</em> will provide.</td>
</tr>
<tr>
<td>(6)</td>
<td>The total price to be paid by the <em>consumer</em> to the <em>firm</em> for the financial service, including all related fees, charges and expenses, and all taxes paid through the <em>firm</em> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <em>consumer</em> to verify it.</td>
</tr>
<tr>
<td>(7)</td>
<td>Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the <em>firm’s</em> control and that past performance is no indicator of future performance.</td>
</tr>
<tr>
<td>(8)</td>
<td>Notice of the possibility that other taxes or costs may exist that are not paid via the <em>firm</em> or imposed by it.</td>
</tr>
<tr>
<td>(9)</td>
<td>Any limitations on the period for which the information provided is valid, including a clear explanation as to how long the <em>firm’s</em> offer applies as it stands.</td>
</tr>
<tr>
<td>(10)</td>
<td>The arrangements for payment and performance.</td>
</tr>
<tr>
<td>(11)</td>
<td>Details of any specific additional cost to the <em>consumer</em> for using a means of distance communication.</td>
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</table>

### Information about the contract

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<tbody>
<tr>
<td>(12)</td>
<td>The existence or absence of any right to cancel under section 66A or 67 of the CCA or the cancellation <em>rules</em> in CONC 11.1 and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <em>consumer</em> may be required to pay (or which may not be returned to the <em>consumer</em>) in accordance with those provisions or <em>rules</em>, as well as the consequences of not exercising the right to cancel.</td>
</tr>
<tr>
<td>(13)</td>
<td>The minimum duration of the contract, in the case of services to be performed permanently or recurrently.</td>
</tr>
<tr>
<td>(14)</td>
<td>Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.</td>
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<td>(15)</td>
<td>Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.</td>
</tr>
<tr>
<td>(16)</td>
<td>The EEA State or States whose laws are taken by the firm as a basis for the establishment of relations with the consumer prior to the conclusion of the contract.</td>
</tr>
<tr>
<td>(17)</td>
<td>Any contractual clause on the law applicable to the contract or on the competent court, or both.</td>
</tr>
<tr>
<td>(18)</td>
<td>In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied and in which language, or languages, the firm, with the agreement of the consumer, undertakes to communicate during the duration of the contract.</td>
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### Information about redress

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<tbody>
<tr>
<td>(19)</td>
<td>How to complain to the firm, whether complaints may subsequently be referred to the Financial Ombudsman Service and, if so, the methods for having access to that body, together with equivalent information about any other applicable named complaints scheme.</td>
</tr>
<tr>
<td>(20)</td>
<td>Whether compensation may be available from the compensation scheme, or any other named compensation scheme, if the firm is unable to meet its liabilities.</td>
</tr>
</tbody>
</table>

**Note:** Recitals 21 and 23 to, and article 3(1) of, the Distance Marketing Directive.
### Abbreviated distance marketing information

This Annex belongs to [CONC 2.7.11 R].

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>The identity of the person in contact with the consumer and his link with the firm.</td>
</tr>
<tr>
<td>2</td>
<td>A description of the main characteristics of the financial service.</td>
</tr>
<tr>
<td>3</td>
<td>The total price to be paid by the consumer to the firm for the financial service, including all taxes paid via the firm or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it.</td>
</tr>
<tr>
<td>4</td>
<td>Notice of the possibility that other taxes and/or costs may exist that are not paid via the firm or imposed by the firm.</td>
</tr>
<tr>
<td>5</td>
<td>The existence or absence of any right to cancel in accordance with the cancellation provisions or rules (in sections 66A or 67 of the CCA or in CONC 11.1) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the consumer may be required to pay on the basis of the cancellation provisions or rules.</td>
</tr>
<tr>
<td>6</td>
<td>That other information is available on request and the nature of that information</td>
</tr>
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</table>

[Note: article 3(3)(b) of the Distance Marketing Directive]
Chapter 3

Financial promotions and communications with customers
3.1 Application

[Note: Until 31 March 2015, transitional provisions apply to CONC 3: see CONC TP 6.1]

Who? What?

3.1.1 R This chapter, unless a rule in CONC 3 specifies differently, applies to a firm.

3.1.2 G Under section 39(3) of the Act, a firm is responsible for financial promotions communicated by its appointed representatives when acting as such.

3.1.3 R This chapter, unless a rule in CONC 3 specifies differently, applies to:

1. a communication with a customer in relation to a credit agreement;
2. the communication or approval for communication of a financial promotion in relation to a credit agreement;
3. a communication with a customer in relation to credit broking;
4. the communication or approval for communication of a financial promotion in relation to credit broking;
5. a communication with a borrower or a prospective borrower in relation to operating an electronic system in relation to lending; and
6. the communication or approval for communication of a financial promotion to a borrower or a prospective borrower in relation to operating an electronic system in relation to lending.

3.1.4 R The clear fair and not misleading rule in CONC 3.3.1 R and the general requirements rule in CONC 3.3.2 R and the guidance in CONC 3.3.5 G to CONC 3.3.11 G also, unless a rule or guidance in those paragraphs specifies differently, apply to:

1. a communication with a customer in relation to debt counselling or debt adjusting; and
2. the communication or approval for communication of a financial promotion in relation to debt counselling or debt adjusting.
Firms are reminded that the rules and guidance in CONC 3.9 also apply to financial promotions and communications with a customer in relation to debt counselling and debt adjusting.

CONC 3.1.5

■ CONC 3.3.1 R also applies to:

(1) a communication with a customer in relation to a consumer hire agreement;

(2) the communication or approval for communication of a financial promotion in relation to a consumer hire agreement; and

(3) a communication with a customer in relation to providing credit information services.

CONC 3.1.6

■ CONC 3 does not apply to:

(1) a financial promotion or a communication which expressly or by implication indicates clearly that it is solely promoting credit agreements or consumer hire agreements or P2P agreements for the purposes in each case of a customer's business;

(2) a financial promotion or a communication to the extent that it relates to qualifying credit; or

(3) an excluded communication.

CONC 3.1.7

(1) ■ CONC 3 does not apply (apart from the provisions in (2)) to a financial promotion or communication that consists of only one or more of the following:

(a) the name or a trading name of the firm (or its appointed representative);

(b) a logo;

(c) a contact point (address (including e-mail address), telephone, facsimile number and website address);

(d) a brief, factual description of the type of product or service provided by the firm.

(2) The provisions in ■ CONC 3 which apply to a financial promotion or communication which falls within (1) are:

(a) ■ CONC 3.1, ■ CONC 3.5.1 R and ■ CONC 3.6.1 R (application);

(b) ■ CONC 3.3.1 R (clear, fair and not misleading);

(c) ■ CONC 3.3.3 R (credit regardless of status);

(d) ■ CONC 3.5.3 R, ■ CONC 3.5.5 R, ■ CONC 3.6.6 R (requirement for representative example or typical APR etc);

(e) ■ CONC 3.5.7 R (other financial promotions requiring a representative APR);

(f) ■ CONC 3.5.12 R (restricted expressions) and ■ CONC 3.6.8 R (restricted expressions); and
(g) any other rules in CONC which are necessary or expedient to apply the rules in (a) to (f).

3.1.8 G

CONC 3.1.7R (1) does not enable detailed information to be given about credit available from the firm. Firms should note that the image advertising exclusion in CONC 3.1.7R (1) is subject to compliance with the rules specified in (2), including the rules which require the inclusion of a representative APR in specified circumstances. A name or logo may trigger the requirement to include a representative APR. Firms should not include any information not referred to in CONC 3.1.7R (1) and should avoid the use of names, logos or addresses, for example, which attempt to convey additional product or cost-related information.

Where?

This chapter applies to a firm in relation to:

(1) a communication with, or the communication or approval for communication of a financial promotion to, a person in the UK;

(2) the communication of an unsolicited real time financial promotion, unless it is made from a place, and for the purposes of a business which is only carried on, outside the UK; and

(3) the communication or approval for communication of a financial promotion that is an electronic commerce communication to a person in an EEA State other than the UK;

and for the purposes of the application of this chapter, it is immaterial whether the credit agreement or the consumer hire agreement to which the financial promotion or communication relates is subject to the law of a country outside the UK.
3.2 Financial promotion general guidance

3.2.1 The rules in this chapter adopt various concepts from the restriction on financial promotions by unauthorised persons in section 21(1) of the Act (Restrictions on financial promotion). Guidance on that restriction and the communications which are exempt from it is contained in PERG 8 (Financial promotion and related activities) and that guidance will be relevant to interpreting these rules. In particular, guidance on the meaning of:

(1) 'communicate' is in PERG 8.6 (Communicate); and

(2) 'invitation or inducement' and 'engage in investment activity' (two elements which, with 'communicate', make up the definition of 'financial promotion') is in PERG 8.4 (Invitation or inducement).

3.2.2 The Privacy and Electronic Communications (EC Directive) Regulations 2003 apply to unsolicited telephone calls, fax messages and electronic mail messages for direct marketing purposes. The Information Commissioner’s Office has produced guidance on the Regulations.

Meaning of “prominent”

3.2.3 For the purposes of this chapter, information or a statement included in a financial promotion or communication will not be treated as prominent unless it is presented, in relation to the other content of the financial promotion or communication, in such a way that it is likely that the attention of the average customer to whom the financial promotion or communication is directed would be drawn to it.
3.3 The clear fair and not misleading rule and general requirements

3.3.1  
(1) A firm must ensure that a communication or a financial promotion is clear, fair, and not misleading.

[Note: paragraphs 2.2 of ILG, 3.16 of DMG and 3.1 of CBG]

(1A) A firm must ensure that each communication and each financial promotion:
(a) is clearly identifiable as such;
(b) is accurate;
(c) is balanced and, in particular, does not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;
(d) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to which it is directed, or by which it is likely to be received; and
(e) does not disguise, omit, diminish or obscure important information, statements or warnings.

(1B) A firm must ensure that, where a communication or financial promotion contains a comparison or contrast, the comparison or contrast is presented in a fair and balanced way and is meaningful.

(2) If, for a particular communication or financial promotion, a firm takes reasonable steps to ensure it complies with (1), (1A) and (1B), a contravention does not give rise to a right of action under section 138D of the Act.

General requirements

3.3.2  
A firm must ensure that a communication or a financial promotion:

(1) uses plain and intelligible language;
(2) is easily legible (or, in the case of any information given orally, clearly audible);
(3) specifies the name of the person making the communication or communicating the financial promotion or the person on whose behalf the financial promotion is made; and
(4) in the case of a communication or financial promotion in relation to credit broking, specifies the name of the lender (where it is known).

[Note: paragraph 4.8a of CBG]

[Note: regulation 3 of CCAR 2004 and regulation 3 of CCAR 2010]

3.3.3 R

(1) A firm must not in a financial promotion or a communication to a customer state or imply that credit is available regardless of the customer’s financial circumstances or status.

[Note: paragraphs 3.7o of CBG and 5.2 of ILG]

(2) This rule does not apply to a financial promotion or communication relating to a credit agreement under which a person takes an article in pawn and the customer’s total financial liability (including capital, interest and all other charges) is limited under the agreement to the proceeds of sale which would represent the true market value (within the meaning of section 121 of the CCA) of the article or articles pawned by the customer.

3.3.4 G

(1) A firm’s trading name, internet address or logo, in particular, could fall within ■CONC 3.3.3 R.

[Note: paragraph 5.2 (box) of ILG]

(2) A statement or an implication that credit is guaranteed or pre-approved, or is not subject to any credit checks or other assessment of creditworthiness, may contravene ■CONC 3.3.3R. Firms are reminded of the requirements of ■CONC 5 (Responsible lending).

Guidance on clear, fair and not misleading

[deleted]

3.3.6 G

If a communication or a financial promotion names the FCA, PRA or both as the regulator of a firm and refers to matters not regulated by the FCA, PRA or both, the firm should ensure that the communication or financial promotion makes clear that those matters are not regulated by the FCA, PRA or both.

3.3.7 G

When communicating information, a firm should consider whether omission of any relevant fact will result in information given to the customer being insufficient, unclear, unfair or misleading.

3.3.8 G

A comparison or contrast to which ■CONC 3.3.1R(1B) applies may be a comparison or contrast with another person, or with another product or service, whether offered by the firm or by another person.
3.3.9 A *firm* should in a *financial promotion* or other communication which includes a premium rate telephone number indicate in a prominent way the likely total cost of a premium rate call including the price per minute of a call, the likely duration of calls and the total cost a *customer* would incur if the *customer* calls for the full estimated duration. *Firms* should note the effect of the *call charges rule* in GEN 7.

[Note: paragraphs 3.9h of CBG and 3.18x (box) of DMG]

Unfair business practices: financial promotions and communications

3.3.10 Examples of practices that are likely to contravene the clear, fair and not misleading rule in CONC 3.3.1 R include:

1. stating or implying that a *firm* is a *lender* (where this is not the case);
   [Note: paragraph 3.7e (box) of CBG]

2. misleading a *customer* as to the availability of a particular *credit* product;
   [Note: paragraph 3.9p of CBG]

3. concealing or misrepresenting the identity or name of the *firm*;
   [Note: paragraph 3.7g (box) of CBG]

4. using false testimonials, endorsements or case studies;
   [Note: paragraph 3.18s of DMG]

5. using false or unsubstantiated claims as to the *firm’s* size or experience or pre-eminence;
   [Note: paragraph 3.18t of DMG]

6. in relation to *debt solutions*, claiming or implying that a *customer* will be free of debt in a specified period of time or making statements emphasising a debt-free life or that a *debt solution* is a stress free or immediate solution;
   [Note: paragraphs 3.18u and 3.18v of DMG]

7. providing online tools, which recommend a particular *debt solution* as suitable for a *customer*, such as, budget calculators or advice websites:
   (a) which do not carry out a sufficiently full assessment of a *customer’s* financial position; or
   (b) which fail to provide clear warnings to a *customer* that financial data entered into a tool has to be accurate;
   [Note: paragraph 3.20c of DMG]

8. emphasising any savings available to a *customer* by proposing to reschedule a *customer’s* debts, without explaining that a *lender* is not obliged to accept less in settlement of the *customer’s* debts than it is
entitled to, nor to freeze interest and charges and that the result may be to increase the total amount payable or the period over which it is to be paid and to impair the customer’s credit rating;

[Note: paragraph 3.18l of DMG]

(9) suggesting that a customer’s repayments will be lower under a proposed agreement without also mentioning (where applicable) that the duration of the agreement will be longer or that the total amount payable will be higher.

[Note: paragraph 5.13 of ILG]

Guidance on misleading introductions

Misleading a customer as to the availability of a particular credit product is likely to include stating or implying that the firm will introduce the customer to a provider of a standard personal loan based on repayment by instalments or of an overdraft facility on a current account (for example, a bank or building society) or of a credit card, but instead introducing the customer to a provider of high-cost short-term credit.

[Note: paragraph 3.9p (box) of CBG]
3.4 Risk warning for high-cost short-term credit

[Note: Until the end of 30 June 2014, transitional provisions apply to CONC 3.4: see CONC TP 31]

Risk warnings

3.4.1 R

(1) A firm must not communicate or approve for communication a financial promotion in relation to high-cost short-term credit, unless it contains the following risk warning:

“Warning: Late repayment can cause you serious money problems. For help, go to moneyadviceservice.org.uk”.

(2) [deleted]

(3) Instead of the website address in paragraph (1), a firm may include the Money Advice Service’s logo registered community trade mark number EU009695909.

(4) The risk warning must be included in a financial promotion in a prominent way.

3.4.2 G

The Money Advice Service has granted a licence to use the logo referred to in CONC 3.4.1R (3) for the purposes of that rule. The terms of the licence are available from the Money Advice Service.
3.5 Financial promotions about credit agreements not secured on land

Application

3.5.1 This section applies:

(1) to a financial promotion in relation to consumer credit lending;

(2) to a financial promotion in relation to credit broking in relation to regulated credit agreements;

(3) to a financial promotion in relation to activities specified in article 36A(1)(a) or (c) of the Regulated Activities Order in relation to what would be regulated credit agreements but for a relevant provision, but only where the firm also carries on such activities in relation to regulated credit agreements;

and in each case, other than to financial promotions to the extent that they relate to agreements secured on land.

Prohibition on financial promotion where goods etc. not sold for cash

3.5.2 A financial promotion must not be communicated where it indicates a firm is willing to provide credit under a regulated restricted-use credit agreement relating to goods or services to be supplied by any person, when at the time the financial promotion is communicated, the firm or any supplier under such an agreement does not hold itself out as prepared to sell the goods or provide the services (as the case may be) for cash.

[Note: section 45 of CCA]

Content of financial promotions

3.5.3 (1) Where a financial promotion indicates a rate of interest or an amount relating to the cost of credit whether expressed as a sum of money or a proportion of a specified amount, the financial promotion must also:

(a) include a representative example in accordance with CONC 3.5.5 R, and

(b) specify a postal address at which the person making the financial promotion may be contacted.

[Note: regulation 4(1) of CCAR 2010]
(2) Paragraph (1)(a) does not apply where the financial promotion:
(a) falls within CONC 3.5.7 R; and
(b) does not indicate a rate of interest or an amount relating to the cost of credit other than the representative APR.

[Note: regulation 4(2) of CCAR 2010]

Paragraph (1)(a) also does not apply where the financial promotion relates only to credit agreements in respect of which the APR is 0%.

(3) Paragraph (1)(b) does not apply to financial promotions:
(a) communicated by means of television or radio broadcast; or
(b) in any form on the premises of a dealer or lender, other than financial promotions in writing which customers are intended to take away; or
(c) which include the name and address of a dealer; or
(d) which include the name and postal address of a credit broker.

[Note: regulation 4(1)b of CCAR 2010]

Guidance on showing interest rates and cost of credit

3.5.4

(1) A rate of interest for the purpose of CONC 3.5.3R (1) is not limited to an annual rate of interest but would include a monthly or daily rate or an APR. It would also include reference to 0% credit (but where the APR is 0% and CONC 3.5.3R(2A) applies, a representative example is not required). An amount relating to the cost of credit would include the amount of any fee or charge, or any repayment of credit (where it includes interest or other charges).

[Note: paragraph 6.7 of BIS Guidance on regulations implementing the Consumer Credit Directive]

(2) If a rule in CONC 3.5 applies to a rate of interest or a charge, and the rate or charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the Consumer Credit Directive]

Representative example

3.5.5

(1) The representative example in CONC 3.5.3R (1) must comprise the following items of information:
(a) the rate of interest, and whether it is fixed or variable or both, expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;
(b) the nature and amount of any other charge included in the total charge for credit;
(c) the total amount of credit;
(d) the representative APR;
(e) in the case of credit in the form of a deferred payment for specific goods, services, land or other things, the cash price and the amount of any advance payment;
(f) the duration of the agreement;
(g) the total amount payable; and
(h) the amount of each repayment of credit.

[Note: regulation 5(1) of CCAR 2010]

[Note: article 4 of the Consumer Credit Directive]

(2) The items of information required by (1)(a), (b), (c), (e), (f) and (g) must be those which the firm communicating or approving the financial promotion reasonably expects at the date on which the financial promotion is made to be representative of credit agreements to which the representative APR applies and which are expected to be entered into as a result of the promotion.

[Note: regulation 5(2) of CCAR 2010]

(3) For (1)(e), the reference in (2) to “credit agreements to which the representative APR applies” is to agreements providing credit for the purchase of specific goods, services, land or other things, to which the representative APR applies.

[Note: regulation 5(3) of CCAR 2010]

(4) For the purposes of (1)(a), where the credit agreement provides for different ways of drawdown with different rates of interest, the rate of interest shall be assumed to be the highest rate applied to the most common drawdown mechanism for the product to which the agreement relates.

[Note: regulation 5(4) of CCAR 2010]

(5) The information required by (1) must be:
   (a) specified in a clear, concise and prominent way;
   (b) accompanied by the words “representative example”;
   (c) presented together with each item of information being given equal prominence; and
   (d) given no less prominence than:
      (i) any other information relating to the cost of credit in the financial promotion, except for any statement relating to an obligation to enter into a contract for an ancillary service referred to in ■ CONC 3.5.10 R; and
      (ii) any indication or incentive of a kind referred to in ■ CONC 3.5.7 R.

[Note: regulation 5(6) of CCAR 2010]

(6) A financial promotion for a credit agreement with no fixed duration is not required to include the duration of the agreement or the total amount payable or the amount of each repayment of credit.

[Note: regulation 5(1)f of CCAR 2010]
(7) A financial promotion for an authorised non-business overdraft agreement is not required to include a representative APR.

[Note: regulation 5(5) of CCAR 2010]

Guidance on the representative example

(1) The representative example in CONC 3.5.5 R should not be limited to being representative of agreements featured in the financial promotion if the firm communicating or approving the financial promotion expects other agreements to be entered into as a result of the financial promotion, whether with the firm or with a third party.

[Note: paragraph 6.8 of BIS Guidance on regulations implementing the Consumer Credit Directive]

(1A) Firms are referred to the Glossary definition of representative APR and reminded that they should consider the agreements which they reasonably expect to be entered into (whether by the firm or by another person) as a result of the financial promotion, and ensure that the 51% test in that definition takes account of the APR of each of those agreements. The representative example in CONC 3.5.5 R should be representative of agreements to which the representative APR applies.

(1B) The example referred to in (1) is unlikely to be representative if, for example, most customers entering into agreements as a result of the financial promotion are likely to do so for a lower amount of credit than that indicated in the example, or with higher rates of interest or other charges than those indicated in the example.

(2) Where the agreement provides for compounding, the rate of interest in CONC 3.5.5 R (1) should generally be the effective annual interest rate and lenders should use the same assumptions to calculate this interest rate as they do for the APR; the assumptions set out in CONC App 1.2. If a firm uses a different rate to calculate the rate of interest in CONC 3.5.5 R (1) it must clearly explain this to the customer, so that the customer is clear whether and to what extent the rate used is comparable with rates shown by other lenders.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the Consumer Credit Directive]

(3) [deleted]

(4) For charges other than interest which are included in the total charge for credit, the financial promotion should in each case make clear the nature of the charge and the amount of the charge if ascertainable or a reasonable estimate of the charge, making clear in that case it is an estimate.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the Consumer Credit Directive]

(5) The total amount of credit equates to the sum available to the customer to use and does not include charges which are financed by the credit agreement; those are part of the total charge for credit.
(6) For showing the cash price, the total cash price of all items should be shown, together with the price of each item individually. For the purposes of the Glossary definition of cash price in this context, a discount will be treated as generally available if most customers paying in cash are likely to be, or would reasonably expect to be, offered or given the discount.

Other financial promotions requiring a representative APR

3.5.7

(1) A financial promotion must include the representative APR if it:

(a) states or implies that credit is available to individuals who might otherwise consider their access to credit restricted; or
(b) includes a favourable comparison relating to the credit, whether express or implied, with another person, product or service; or
(c) includes an incentive to apply for credit or to enter into an agreement under which credit is provided.

[Note: regulation 6 of CCAR 2010]

(2) The representative APR must be given no less prominence than any of the matters in (1).

(3) This rule does not apply to a financial promotion:

(a) for an authorised non-business overdraft agreement; or
(b) for a credit agreement in respect of which the APR is 0%; or
(c) for a credit agreement to be entered into by a community finance organisation as lender.

3.5.8

(1) A firm’s trading name, website address or logo could trigger the requirements in CONC 3.5.7R(1).

(2) For the purposes of CONC 3.5.7R(1)(b), a comparison with another person, product or service includes a reference (whether stated or implied) to:

(a) the terms on which, or the way in which, credit is offered or made available; or
(b) the nature or quality or any other aspect of the service relating to the credit that the person offers or provides (or does not offer or provide).

The financial promotion does not need to specify a particular person, product or service for there to be a comparison.

(3) A financial promotion does not necessarily include a comparison where it merely refers to a person, product or service in a factual manner, but there will be an implied comparison for the purposes of CONC 3.5.7R(1)(b) if it may reasonably be inferred that a comparison is being made.

(4) A statement about matters such as the speed or ease of processing, considering or granting an application, of entering into an agreement, or of making funds available, may constitute an incentive for the purposes of CONC 3.5.7R(1)(c). This will depend on the context...
of the statement and the circumstances in which it is made. A statement will be an incentive where it is likely to persuade or influence a customer to apply for credit or to enter into an agreement under which credit is provided, or is presented in a way which is likely to have that effect.

(5) Other examples of things which could be incentives are gifts, special offers, discounts and rewards.

**Annual percentage rate of charge**

3.5.9 In a financial promotion:

(1) an APR must be shown as “%APR”;

(2) where an APR is subject to change it must be accompanied by the word “variable”; and

(3) the representative APR must be accompanied by the word “representative”.

[Note: regulation 7 of CCAR 2010]

**Ancillary services**

3.5.10 (1) A financial promotion must include a clear, concise and prominent statement in respect of any obligation to enter into a contract for an ancillary service where:

(a) the conclusion of that contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions promoted; and

(b) the cost of that ancillary service cannot be determined in advance.

[Note: regulation 8 of CCAR 2010]

(2) The statement in (1) must be presented together with any representative APR included in the financial promotion.

(3) This rule does not apply to a financial promotion for an authorised non-business overdraft agreement.

**Security**

3.5.11 Where a financial promotion concerns a facility for which security is or may be required, the promotion must:

(1) state that security is or may be required; and

(2) specify the nature of the security.

[Note: regulation 9 of CCAR 2010]
Restricted expressions

3.5.12

(1) A financial promotion must not include:
(a) the word “overdraft” or any similar expression as describing any agreement for running-account credit, except where an agreement enables a customer to overdraw on a current account;
(b) the expression “interest free” or any similar expression indicating that a customer is liable to pay no greater amount in respect of a transaction financed by credit than he would be liable to pay as a cash purchaser for the like transaction, except where the total amount payable does not exceed the cash price;
(c) the expression “no deposit” or any similar expression, except where no advance payments are to be; or
(d) [deleted];
(e) the expression “gift”, “present” or any similar expression, except where there are no conditions which would require the customer to repay the credit or to return the item that is the subject of the claim.

[Note: regulation 10 of CCAR 2010]

(2) A financial promotion must not include for a repayment of credit the expression “weekly equivalent” or any expression to like effect or any expression of any other periodical equivalent, unless weekly repayments or the other periodical payments are provided for under the agreement.

(3) In this rule, “cash purchaser” means a person who, for money consideration, acquires goods, land or other things or is provided with services under a transaction which is not financed by credit.

Total charge for credit and APR

3.5.13

(1) Where a financial promotion is about running-account credit and the credit limit applicable is not yet known on the date the financial promotion is made, but it is known that it will be less than £1,200, the credit limit must be assumed to be an amount equal to that maximum limit.

[Note: paragraph 1 of schedule to CCAR 2010]

(2) The assumption in (1) applies in place of the assumption in CONC App 1.2.5 R for the purpose of calculating the total charge for credit.

Total charge for credit and APR: tolerances for APR

(3) For a financial promotion, it is sufficient to show an APR if there is included in the promotion:
(a) a rate which exceeds the APR by not more than one; or
(b) a rate which falls short of the APR by not more than 0.1; or
(c) where applicable, a rate determined in accordance with (4) or (5).
Total charge for credit and APR: tolerance where repayments are nearly equal

(4) Where an agreement under which all repayments but one are equal and that one repayment does not differ from any other repayment by more whole pence than there are repayments of credit, there may be included in a financial promotion about the agreement a rate found under CONC App 1.2.4 R as if that one repayment were equal to the other repayments to be made under the agreement.

Total charge for credit and APR: tolerance regarding interval between relevant date and first repayment

(5) Where a credit agreement provides that:

(a) three or more repayments are to be made at equal intervals; and

(b) the interval between the relevant date and the first repayment is greater than the interval between the repayments;

a financial promotion about the agreement may include a rate found under CONC App 1.2.4 R as if the interval between the relevant date and the first repayment were shortened so as to be equal to the interval between the repayments.

The relevant date in (5) is:

(a) where a date on which the customer is entitled to require provision of the subject of a credit agreement is specified in or can be determined from the agreement, the earliest such date;

(b) in any other case, the date of making the agreement.
3.6 Financial promotions about credit agreements secured on land

Application

3.6.1 This section applies:

(1) to a financial promotion in relation to consumer credit lending in relation to regulated credit agreements secured on land; and

(2) to a financial promotion in relation to credit broking in relation to regulated credit agreements secured on land;

and in both cases other than financial promotions to the extent that they relate to qualifying credit.

Definitions

3.6.2 In this section, for a financial promotion relating to credit to be provided under a credit agreement "relevant date" means:

(1) in a case where a date is specified in or determinable under the agreement at the date of its making as that on which the customer is entitled to require provision of anything the subject of the agreement, the earliest such date; and

(2) in any other case, the date of the making of the agreement.

Prohibition on financial promotion where goods etc not sold for cash

3.6.3 A financial promotion must not be communicated where it indicates a firm is willing to provide credit under a regulated restricted-use credit agreement secured on land relating to goods or services to be supplied by any person, when at the time the financial promotion is communicated, the firm or any supplier under such an agreement does not hold itself out as prepared to sell the goods or provide the services (as the case may be) for cash.

[Note: section 45 of CCA]

Content of financial promotions

3.6.4 (1) Where a financial promotion includes any of the amounts referred to in (5) to (7) of CONC 3.6.10 R the promotion must:
(a) include all the other items of information (other than any item inapplicable to the particular case) listed in CONC 3.6.10 R; and

(b) specify a postal address at which the person making the promotion may be contacted, except in the case of a financial promotion:

(i) communicated by means of television or radio broadcast;

(ii) in any form on the premises of a lender or dealer (other than a financial promotion in writing which customers are intended to take away);

(iii) which includes the name and address of a dealer; or

(iv) which includes the name and a postal address of a credit broker.

[Note: regulation 4(1) of CCAR 2004]

(2) The items of information listed in CONC 3.6.10 R must be given equal prominence and must be shown together as a whole.

[Note: regulation 4(2) of CCAR 2004]

(3) Any information in any book, catalogue, leaflet or other document which is likely to vary from time to time must be taken for the purpose of (2) to be shown together as a whole if:

(a) it is set out together as a whole in a separate document issued with the book, catalogue, leaflet or other document;

(b) the other information in the financial promotion is shown together as a whole in the book, catalogue, leaflet or other document; and

(c) the book, catalogue, leaflet or other document identifies the separate document in which the information likely to vary is set out.

[Note: regulation 4(3) of CCAR 2004]

Statements in relation to security

(1) Where a financial promotion concerns a facility for which security is or may be required, the promotion must:

(a) state that security is or may be required; and

(b) specify the nature of the security.

[Note: regulation 7(1) of CCAR 2004]

(2) Where, in the case of a financial promotion, the security comprises or may comprise a mortgage or charge on a property used by the customer as a dwelling (whether or not the customer’s primary residence):

(a) except where (c) applies, the financial promotion must contain a warning in the form:

“YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT”;
(b) where the financial promotion indicates that credit is available for the payment of debts due to other lenders, the warning in (a) must be preceded by the words:

“THINK CAREFULLY BEFORE SECURING OTHER DEBTS AGAINST YOUR HOME.”

(c) where the credit agreement is or would be an agreement of a kind described in (3), the financial promotion must contain a warning in the form:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN ANY DOUBT, SEEK INDEPENDENT ADVICE”.

[Note: regulation 7(2) of CCAR 2004]

(3) The kinds of agreement in (2)(c) are:

(a) any credit agreement under which no instalment repayments secured by the mortgage on the customer’s home, and no payment of interest on the credit (other than interest charged when all or part of the credit is repaid voluntarily by the customer), are due or capable of becoming due while the customer continues to occupy the mortgaged land as the customer’s main residence; and

(b) any credit agreement:

(i) which is secured by a mortgage which the lender cannot enforce by taking possession of or selling (or concurring with any other person in selling) the mortgaged land or any part of it while the customer continues to occupy it as the customer’s main residence; and

(ii) under which, although interest payments may become due, no full or partial repayment of the credit secured by the mortgage is due or capable of becoming due while the customer continues to occupy the mortgaged land as the customer’s main residence.

[Note: regulation 7(3) of CCAR 2004]

(4) Where a financial promotion is for a mortgage or other loan secured on property and repayments are to be made in a currency other than sterling, the financial promotion must contain a warning in the form:

“CHANGES IN THE EXCHANGE RATE MAY INCREASE THE STERLING EQUIVALENT OF YOUR DEBT”.

[Note: regulation 7(4) of CCAR 2004]

(5) The warnings provided for in (2) and (4):

(a) must be given greater prominence in a financial promotion than is given to:

(i) any rate of charge other than the typical APR; and

(ii) any indication or incentive of a kind referred to in ■ CONC 3.6.6R (1); and
(b) must be given no less prominence in a financial promotion than is given to any of the items listed in CONC 3.6.10 R that appear in the financial promotion.

[Note: regulation 7(6) of CCAR 2004]

(6) Paragraphs (2), (3), (4) and (5) do not apply in the case of a financial promotion which:

(a) is communicated by means of television or radio broadcast in the course of programming the primary purpose of which is not financial promotion; or

(b) is communicated by exhibition of a film (other than exhibition by television broadcast); or

(c) contains only the name of the firm communicating the financial promotion.

[Note: regulation 7(8) of CCAR 2004]

**Annual percentage rate of charge**

3.6.6 R

(1) A financial promotion must specify the typical APR if the promotion:

(a) specifies any other rate of charge;

(b) includes any of the items of information listed in CONC 3.6.10R (5) to (7);

(c) indicates in any way, whether expressly or by implication, including by means of the name given to a business or of an address used by a business for the purposes of electronic communication, that:

(i) credit is available to persons who might otherwise consider their access to credit restricted; or

(ii) any of the terms on which credit is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other lender; or

(iii) the way in which the credit is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other lender; or

(d) includes any incentive (including but not limited to, gifts, special offers, discounts and rewards) to apply for credit or to enter into an agreement under which credit is provided;

[Note: regulation 8(1) of CCAR 2004]

(e) includes an incentive (in the form of a statement about the speed or ease of, processing, considering or granting an application or of making funds available) to apply for credit or to enter into an agreement under which credit is provided.

(2) A financial promotion may not indicate the range of APRs charged where credit is provided otherwise than by specifying, with equal prominence, both:
(a) the APR which the firm communicating or approving the financial promotion reasonably expects, at the date on which the promotion is communicated or approved, would be the lowest APR at which credit would be provided under not less than 10% of the agreements which will be entered into as a result of that promotion; and

(b) the APR which the firm communicating or approving the financial promotion reasonably expects, at that date, would be the highest APR at which credit would be provided under any of the agreements which will be entered into as a result of that promotion.

[Note: regulation 8(2) of CCAR 2004]

(3) An APR must be shown as “%APR”.

[Note: regulation 8(3) of CCAR 2004]

(4) Where an APR is subject to change it must be accompanied by the word “variable”.

[Note: regulation 8(4) of CCAR 2004]

(5) The typical APR in a financial promotion must be:

(a) accompanied by the word “typical”;  
(b) presented together with any of the items listed in ■CONC 3.6.10 R that are included in the promotion;  
(c) given greater prominence in the promotion than:  
   (i) any other rate of charge;  
   (ii) any items listed in ■CONC 3.6.10 R; and  
   (iii) any indication or incentive of a kind referred to in (1); and

(d) in the case of a promotion in printed or electronic form which includes any of the items listed in ■CONC 3.6.10 R, shown in characters at least one and a half times the size of the characters in which those items appear.

[Note: regulation 8(5) of CCAR 2004]

(6) In the case of a financial promotion relating to a borrower-lender agreement enabling the customer to overdraw on a current account under which the lender is the Bank of England or an authorised person with permission to accept deposits, there may be substituted for the typical APR a reference to the statement of:

(a) a rate, expressed to be a rate of interest, being a rate determined as the rate of the total charge for credit calculated on the assumption that only interest is included in the total charge for credit, and

(b) the nature and amount of any other charge included in the total charge for credit.

[Note: regulation 8(6) of CCAR 2004]
Whether or not a reference to speed or ease in 3.6.6R (1)(e) constitutes an incentive to apply for credit or enter into an agreement under which credit is provided would depend upon the circumstances, including whether it is likely to persuade or influence a customer to take those steps or is merely a factual statement about the product or service.

### Restricted expressions

3.6.8

(1) A financial promotion must not include:

(a) the word “overdraft” or any similar expression as describing any agreement for running-account credit, except where the agreement enables a customer to overdraw on a current account;

(b) the expression “interest free” or any similar expression indicating that a customer is liable to pay no greater amount in respect of a transaction financed by credit than he would be liable to pay as a cash purchaser for the like transaction, except where the total amount payable by the customer does not exceed the cash price;

(c) the expression “no deposit” or any similar expression, except where no advance payments are to be made;

(d) the expression “loan guaranteed” or “pre-approved” or “no credit checks” or any similar expression, except where the agreement is free of any conditions regarding the credit status of the customer;

(e) the expression “gift”, “present” or any similar expression, except where there are no conditions which would require the customer to repay the credit or return the item that is the subject of the claim.

[Note: regulation 9 of CCAR 2004]

(2) A financial promotion must not include for a repayment of credit the expression “weekly equivalent” or any expression to like effect or any expression of any other periodical equivalent, unless weekly repayments or the other periodical payments are provided for under the agreement.

(3) In this rule “cash purchaser” means a person who for money consideration acquires goods, land or other things or is provided with services, under a transaction which is not financed by credit.

### Total charge for credit and any APR: assumptions about running account credit

3.6.9

(1) In the case of a financial promotion about running-account credit, the following assumptions have effect for the purpose of calculating the total charge for credit and any APR, notwithstanding the terms of the transaction advertised and in place of any assumptions in CONC App 1.1.11 R to CONC App 1.1.18 R that might otherwise apply:

(a) the amount of the credit to be provided must be taken to be £1,500 or, in a case where credit is to be provided subject to a credit limit of less than £1,500, an amount equal to that limit;

(b) it must be assumed that the credit is provided for a period of one year beginning with the relevant date;
(c) it must be assumed that the credit is provided in full on the relevant date;

(d) where the rate of interest will change at a time provided in the transaction within a period of three years beginning with the relevant date, the rate must be taken to be the highest rate at any time obtaining under the transaction in that period;

(e) where the agreement provides credit to finance the purchase of goods, services, land or other things and also provides one or more of:
   (i) cash loans;
   (ii) credit to refinance existing indebtedness of the customer, whether to the lender or another person; and
   (iii) credit for any other purpose;

   and either or both different rates of interest and different charges are payable for the credit provided for all or some of these purposes, it must be assumed that the rate of interest and charges payable for the whole of the credit are those applicable to the provision of credit for the purchase of goods, services, land or other things; and

(f) it must be assumed that the credit is repaid:
   (i) in twelve equal instalments; and
   (ii) at monthly intervals, beginning one month after the relevant date.

[Note: paragraph 1 of schedule 1 to CCAR 2004]

Total charge for credit and any APR: tolerances in disclosure of an APR

(2) For the purposes of ■ CONC 3.6, it is sufficient compliance with the requirement to show an APR if there is included in the financial promotion:

   (a) a rate which exceeds the APR by not more than one; or
   (b) a rate which falls short of the APR by not more than 0.1;

or in a case to which (3) or (4) applies, a rate determined in accordance with those sub-paragraphs or whichever of them applies to that case.

[Note: paragraph 2 of schedule 1 to CCAR 2004]

Total charge for credit and any APR: tolerance where repayments are nearly equal

(3) In the case of an agreement under which all repayments but one are equal and that one repayment does not differ from any other repayment by more whole pence than there are repayments of credit, there may be included in a financial promotion about the agreement a rate found under ■ CONC App 1.1.9 R as if that one repayment were equal to the other repayments to be made under the agreement.

[Note: paragraph 3 of schedule 1 to CCAR 2004]

Total charge for credit and any APR: tolerance of interval between relevant date and first repayment
(4) In the case of an agreement under which:
   (a) three or more repayments are to be made at equal intervals; and
   (b) the interval between the relevant date and the first repayment is greater than the interval between the repayments;

   a financial promotion about the agreement may include a rate found under CONC App 1.1.9 R as if the interval between the relevant date and the first repayment were shortened so as to be equal to the interval between repayments.

   [Note: paragraph 4 of schedule 1 to CCAR 2004]

Information that CONC 3.6.4R(1) may require to be included in a financial promotion

3.6.10 R

(1) The amount of credit which may be provided under a credit agreement or an indication of one or both of the maximum amount and the minimum amount of credit which may be provided.

   [Note: paragraph 1 of schedule 2 to CCAR 2004]

Deposit of money in an account

(2) A statement of any requirement to place on deposit any sum of money in any account with any person.

   [Note: paragraph 2 of schedule 2 to CCAR 2004]

Cash price

(3) In the case of a financial promotion about credit to be provided under a borrower-lender-supplier agreement, where the financial promotion specifies goods, services, land or other things having a particular cash price, the acquisition of which from an identified dealer may be financed by the credit, the cash price of such goods, services, land or other things.

   [Note: paragraph 3 of schedule 2 to CCAR 2004]

Advance payment

(4) A statement as to whether an advance payment is required and, if so, the amount or minimum amount of the payment expressed as a sum of money or a percentage.

   [Note: paragraph 4 of schedule 2 to CCAR 2004]

Frequency, number and amount of repayments of credit

(5) (a) In the case of a financial promotion about running-account credit, a statement of the frequency of the repayments of credit under the transaction and of the amount of each repayment stating whether it is a fixed or minimum amount, or a statement indicating the manner in which the amount will be determined.
(b) In the case of other financial promotions, a statement of the frequency, number and amounts of repayments of credit.

(c) The amount of any repayment under this sub-paragraph may be expressed as a sum of money or as a specified proportion of a specified amount (including the amount outstanding from time to time).

[Note: paragraph 5 of schedule 2 to CCAR 2004]

Other payments and charges

(6) (a) Subject to (b) and (c), a statement indicating the description and amount of any other payments and charges which may be payable under the agreement promoted in the financial promotion.

(b) Where the liability of the customer to make any payment cannot be ascertained at the date the financial promotion is communicated, a statement indicating the description of the payment in question and the circumstances in which the liability to make it will arise.

(c) Paragraphs (a) and (b) do not apply to any charge payable under the transaction to the lender or any other person on behalf of the lender upon failure by the customer or a relative of the customer to do or refrain from doing anything which the customer is required to do or refrain from doing, as the case may be.

[Note: paragraph 6 of schedule 2 to CCAR 2004]

Total amount payable by the customer

(7) In the case of a financial promotion about fixed-sum credit to be provided under a credit agreement which is repayable at specified intervals or in specified amounts and other than cases under which the sum of the payments within (a) to (c) is not greater than the cash price referred to in (3), the total amount payable, being the total of:

(a) advance payments;

(b) the amount of credit repayable by the customer, and

(c) the amount of the total charge for credit.

[Note: paragraph 7 of schedule 2 to CCAR 2004]
3.7 Financial promotions and communications: credit brokers

Application

3.7.1 R This section applies to a financial promotion or a communication with a customer in relation to credit broking in relation to a regulated credit agreement.

3.7.2 R CONC 3.7.4 G also applies to a financial promotion or a communication with a customer in relation to the activities specified in article 36A(1)(a) or (c) of the Regulated Activities Order in relation to a credit agreement that would be a regulated credit agreement but for the relevant provisions.

3.7.2A R CONC 3.7.5 R to CONC 3.7.8 G:

1. apply to a financial promotion or a communication with a customer in relation to credit broking whether or not it is in relation to a regulated credit agreement; but

2. do not apply to a financial promotion or a communication with a customer which clearly indicates that it is made solely in respect of credit broking in relation to a credit agreement secured by a legal or equitable mortgage on land.

Credit brokers’ registered name and status

3.7.3 R A firm must, in a financial promotion or a document which is intended for individuals which relates to its credit broking, indicate the extent of its powers and in particular whether it works exclusively with one or more lenders or works independently.

[Note: section 160A(3) of CCA]

[Note: article 21(a) of the Consumer Credit Directive]

3.7.4 G A firm should in a financial promotion or in a communication with a customer:

1. make clear, to the extent an average customer of the firm would understand, the nature of the service that the firm provides;

[Note: paragraphs 3.7e and 4.8b of CBG]
(2) indicate to the customer in a prominent way the existence of any financial arrangements with a lender that might impact upon the firm's impartiality in promoting a credit product to a customer;

[Note: paragraphs 2.2, 6th bullet and 4.6 of CBG]

(3) only describe itself as independent if it is able to provide access to a representative range of credit products from the relevant product market on competitive terms and is not constrained in providing such access, for example, because of one or more agreements with lenders; and

[Note: paragraph 4.5 of CBG]

(4) ensure that any disclosure about the extent of its independence is prominent and in accordance with the clear, fair not misleading rule in CONC 3.3.1 R, clear and easily comprehensible.

[Note: paragraph 4.6 of CBG]

3.7.5 R A firm must ensure that a financial promotion or a communication with a customer specifies the legal name of the firm as it appears in the Financial Services Register and not merely a trading name.

3.7.6 G CONC 3.7.5 R requires all financial promotions and communications with customers to specify the legal name of the firm: the rule does not prohibit the use of trading names, but does require the legal name to be given in addition to any trading name used. If the firm is a company registered under the Companies Act 2006, the firm's legal name will be the name by which it is registered.

3.7.7 R (1) A firm which is a credit broker and not a lender must ensure that any financial promotion states prominently that the firm is a credit broker and that it is not a lender.

(2) A firm which is both a credit broker and a lender must ensure that any financial promotion that solely promotes its services as a credit broker states prominently that the financial promotion is promoting the firm's services as a credit broker and not its services as a lender.

3.7.8 G For the purposes of CONC 3.7.7 R, a statement will not be treated as prominent unless it is presented, in relation to other content of the financial promotion, in such a way that it is likely that the attention of the average person to whom the financial promotion is directed would be drawn to it.
### 3.7A Financial promotions and communications: P2P agreements

#### Application

This section applies to a firm with respect to operating an electronic system in relation to lending.

#### Status

1. A firm must, in any relevant communication, indicate the extent of its powers, in particular whether it works exclusively with one or more lenders (including, for example, if it works exclusively with lenders who are participants in the electronic system that the firm operates) or whether it works as an independent broker.

   [Note: article 21(a) of the Consumer Credit Directive]

2. In this rule, a “relevant communication” means a financial promotion or a document which:
   
   (a) is intended for borrowers or prospective borrowers; and
   
   (b) relates to a P2P agreement:
      
      (i) that is, or would be, a regulated credit agreement; and
      
      (ii) in respect of which the lender is, or would be, acting by way of business.
3.8 Financial promotions and communications: lenders

Application

3.8.1 This section applies to a financial promotion or a communication with a customer in relation to consumer credit lending.

Unfair business practices

3.8.2 A firm must not in a financial promotion or a communication with a customer:

1. provide an application for credit with a pre-completed amount of credit which is not based on having carried out a creditworthiness assessment (see CONC 5.2A); or

   [Note: paragraph 5.3 of ILG]

2. state or imply that providing credit is dependent solely upon the value of the equity in property on which the agreement is to be secured; or

   [Note: paragraph 5.4 of ILG]

3. promote credit where the firm knows, or has reason to believe, that the agreement would be unsuitable for that customer in the light of the customer's financial circumstances or, if known, intended use of the credit.

   [Note: paragraph 5.5 of ILG]

3.8.3 An agreement is likely to be unsuitable for the purposes of CONC 3.8.2R (3) including in the following situations where a firm:

1. promotes, suggests or advises taking out a secured loan or to take out a secured loan to replace or convert an unsecured loan when it is clearly not in that person's best interests to do so at that time; or

2. promotes, suggests or advises taking out high-cost short-term credit which would be expensive as a means of longer term borrowing, as being suitable for sustained borrowing over a longer period.

   [Note: paragraph 5.5 (box) of ILG]
3.8.4 For the purposes of CONC 3.8.2R (3) the unsuitability of an agreement does not apply to the question of whether a customer should enter into a regulated credit agreement at all.

[Note: paragraph 5.5 (box) of ILG]
3.9 Financial promotions and communications: debt counsellors and debt adjusters

Application

3.9.1 This section applies to a financial promotion or a communication with a customer in relation to debt counselling and to debt adjusting.

Financial promotions and communications

3.9.2 (1) The clear, fair and not misleading rule in CONC 3.3.1 R applies to a communication with a customer or the communication or approval for communication of a financial promotion in relation to debt counselling or debt adjusting and in relation to a communication with a customer in relation to providing credit information services.

(2) In the light of the complexity of debt counselling, it is unlikely that media which provide restricted space for messages would be a suitable means of making financial promotions about debt solutions.

Contents of financial promotions and communications

3.9.3 A firm must ensure that a financial promotion or a communication with a customer (to the extent a previous communication to the same customer has not included the following information) includes:

(1) a statement of the services the firm offers;

(2) a statement of any relationship with a business associate which is relevant to the services offered in the promotion;

[Note: paragraph 2.5a of DMG]

(3) a statement setting out the level of fees charged for the firm’s services, how they are calculated, what service they cover and where it is not possible to state an exact amount, a reasonable estimate of the anticipated fees, or the average level of its fees, for the service in question;

[Note: paragraphs 2.5c and 3.18f of DMG]

(4) a statement of whether any aspect of the services is provided by a third party or at extra cost;

[Note: paragraphs 2.5a and 3.18f of DMG]
(5) A statement that a customer may be eligible under the Financial Ombudsman Service and referring by a link or otherwise to the information the firm is required to publish under DISP 1.2.1R (1);

[Note: paragraph 2.5b of DMG]

(6) Where this is the case, a statement that the firm's service is profit-seeking;

[Note: paragraphs 2.5c and 3.18a of DMG]

(7) Where this is the case, a statement that the firm's service is offered in return for payment from the customer;

[Note: paragraphs 2.5c and 3.18a of DMG]

(8) Other than for a not-for-profit debt advice body, a reference to impartial information and to sources of assistance from not-for-profit debt advice bodies;

[Note: paragraph 2.5d of DMG]

(9) Where the financial promotion or communication sets out detail of how a customer might resolve debt problems by explaining options, the most important actual or potential advantages, disadvantages and risk of each option, including those of the debt solution offered by the firm;

[Note: paragraphs 2.5d and 3.18h of DMG]

(10) A statement setting out the likely adverse effect of entering into the debt solution in question on the customer's credit rating;

[Note: paragraph 3.18g of DMG]

(11) A statement setting out that evidence of entering into an individual voluntary arrangement, a debt relief order or a protected trust deed will be entered on a public register;

[Note: paragraph 3.18g of DMG]

(12) Where applicable, a statement setting out that a debt solution is only available in a particular country of the UK;

[Note: paragraph 3.18i of DMG]

(13) Where entry into a debt solution with the firm will lead to a period when payments to a customer's lenders or owners (in whole or in part) are not made or are retained by the firm, a warning of the likelihood of falling into arrears or increasing arrears and an explanation of when distributions would be made to lenders or owners;

[Note: paragraph 3.18n of DMG]

(14) A statement of the risks of entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including of the following risks:
(a) if the arrangement or deed fails, the risk of bankruptcy;
(b) homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;
(c) there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
(d) the customer’s lenders or owners may not approve the individual voluntary arrangement or the protected trust deed; and
(e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding; and

[Note: paragraph 3.18o of DMG]

(15) a statement that where another option for dealing with a customer’s debts is available, that another option is available and may be suitable for the customer.

[Note: paragraph 3.18r of DMG]

(16) an explanation that compensation might be available from the compensation scheme if there is a shortfall in client money held by the firm for that customer.

3.9.4 In CONC 3.9.3R (8) making reference to impartial sources of information should include making customers aware of publications concerning dealing with creditors published by the Insolvency Service (England and Wales), the Department of Enterprise, Trade and Investment (Northern Ireland) or debt advice published by the Scottish Government.

3.9.4A Firms are reminded of:

(1) the guidance in CONC 3.3.1G(6) to (8) in relation to debt solutions; and

(2) the rule in CONC 8.2.4R which requires firms to notify the customer that free debt counselling, debt adjusting and providing of credit information services is available and that the customer can find out more by contacting the Money Advice Service.

3.9.5 A financial promotion or a communication with a customer by a firm must not:

(1) falsely claim or imply that the help and debt advice is provided on a free, impartial or independent basis, where the firm has a profit-seeking motive;

[Note: paragraph 3.18b of DMG]
(2) falsely claim or imply in any way that the firm is, or represents, a charitable or not-for-profit body or government or local government organisation;

[Note: paragraph 3.18c of DMG]

(3) promote a claims management service (within the meaning of section 419A of the Act) as a way of managing a customer’s debts;

[Note: paragraph 3.18k of DMG]

(4) claim or imply that the firm can guarantee a favourable outcome in negotiations with a lender or owner concerning the customer’s debts;

[Note: paragraph 3.18m of DMG]

(5) unfairly request, suggest or direct a customer to call the firm using a premium rate telephone number.

[Note: paragraph 3.18w of DMG]

3.9.6 An example of unfairly directing a customer to a premium rate telephone number may be to direct a person wishing to complain to such a number.

Contents of financial promotions and communications

3.9.6A Firms should note the effect of the call charges rule in GEN 7.

On-line promotion of debt solutions

3.9.7 A firm must not:

(1) unless it is a not-for-profit debt advice body or a person who will provide such services, operate a look alike website designed to attract customers seeking free, charitable, not-for-profit or governmental or local governmental debt advice; or

[Note: paragraph 3.20a of DMG]

(2) seek to use internet search tools or search engines so as to mislead a customer into visiting its website when the customer is seeking free, charitable, not-for-profit or governmental or local governmental debt advice.

[Note: paragraph 3.20b of DMG]
3.10 Financial promotions not in writing

Application

3.10.1 This section applies:

(1) to a financial promotion in relation to consumer credit lending, credit broking, debt counselling, debt adjusting, operating an electronic system in relation to lending in relation to prospective borrowers or borrowers under P2P agreements;

(2) in relation to the communication of a financial promotion that is not in writing.

Promotions that are not in writing

3.10.2 A firm must not communicate a solicited or unsolicited financial promotion that is not in writing, to a customer outside the firm's premises, unless the person communicating it:

(1) only does so at an appropriate time of the day; and

(2) identifies that person and the firm represented at the outset and makes clear the purpose of the communication.

[Note: paragraphs 3.9d of CBG and 3.12b of DMG]

3.10.3 Firms should note that:

(1) section 49 of the CCA makes it a criminal offence to canvass borrower-lender agreements, for example cash loans, off trade premises (within the meaning of section 48 of the CCA); and

(2) section 154 of the CCA makes it a criminal offence to canvass off trade premises credit broking of a kind specified by article 36A(1)(a) to (c) of the Regulated Activities Order, debt adjusting, debt counselling or providing credit information services (within the meaning of section 153 of the CCA).

(3) The FCA takes the view that sections 48 and 49 of the CCA mean that any discussions about new borrowing or refinancing with a customer that take place in the borrower's home must be initiated by the borrower, either in the form of a specific written request or, only where the individual is in the borrower's home other than for the purpose of engaging in such discussion, in the form of an oral invitation.
(4) The FCA has considered the potential for the use of “umbrella requests to visit”. “Umbrella requests” or “permissions to call” tend to be signed by a borrower when entering into a borrower-lender agreement (or shortly after) and purport to allow the lender to visit the borrower’s home to discuss other borrowing at any time, over the duration of the agreement or beyond. The FCA takes the view that such “umbrella requests” do not meet the requirements of the CCA. “Umbrella requests” create open-ended opportunities for firms to raise the prospect of additional borrowing, without the borrower having specifically requested or even considered it.

(5) A valid request is one made on the instigation of the borrower when the borrower wants to discuss a borrower-lender agreement. The FCA would expect to see the following for a firm to comply with sections 48 and 49 of the CCA:

(a) the request should be a positive act by the borrower taken specifically for the purpose of discussing other borrowing;

(b) the visit should be made in response to that request. Where a request is reasonably specific on timing, the visit should be within that timing. Where the request is not reasonably specific on timing, any visit should take place within a reasonable proximity to that request for it to be clear that the visit is being made in response to that request; and

(c) there should be a separate request made for each agreement or contractual variation.

(6) In the FCA’s view this would not stop an agent or representative of a firm who has called on a borrower with the sole purpose of collecting on an existing loan from discussing new or additional borrowing if the borrower asks them to do so during the collection visit. However, if the agent or representative raised the topic of new or additional finance, we consider it would be very difficult for them to establish that they had not visited with that purpose.

(7) We expect that firms should be able to rely on their existing procedures for receiving written requests from new customers in relation to existing borrowers.

**Failure to comply**

Failure to comply with section 49 of the CCA is a criminal offence. Only a court can determine the meaning of sections 48 and 49 of the CCA.
3.11 Not approving certain financial promotions

3.11.1 This section applies to a financial promotion in relation to a credit agreement, credit broking, debt counselling, debt adjusting and operating an electronic system in relation to lending in relation to prospective borrowers or borrowers under P2P agreements.

Requirement not to approve certain financial promotions

3.11.2 A firm must not approve a financial promotion to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

3.11.3 CONC 3.11.2 R does not prevent the communication by a firm itself (i.e. a firm with a permission) of a financial promotion. A firm’s approval of a financial promotion concerns approval for the communication of the promotion by an unauthorised person which is prevented by CONC 3.11.2 R.
Section 3.11: Not approving certain financial promotions
Chapter 4

Pre-contractual requirements
4.1 Content of quotations

Application

4.1.1 This section, apart from ■ CONC 4.1.4 R, applies to:

(1) a firm with respect to consumer credit lending; or

(2) a firm with respect to consumer hiring;

including where the firm provides a quotation acting on behalf of a customer.

4.1.2 ■ CONC 4.1.4 R applies to a firm with respect to credit broking, including where the firm provides a quotation acting on behalf of a customer.

Lenders and owners: contents of quotation for certain agreements

4.1.3 (1) When a firm provides a quotation to a customer in connection with a prospective credit agreement which would or might be secured on the customer’s home, the firm must include (or cause to be included) in the quotation a statement that such security would or might be required.

[Note: regulation 3a of SI 1999/2725]

(2) When a firm provides a quotation to a customer (C) in connection with a prospective credit agreement which would or might be secured on C’s home under which, while C continues to occupy the home as C’s main residence and either:

(a) no instalment repayments of the credit secured by a mortgage on C’s home and no payment of interest on the credit (other than interest charged when all or part of the credit is repaid voluntarily by C), are due or capable of becoming due; or

(b) the lender cannot enforce the credit agreement by taking possession of or selling (or concurring with any other person in selling) the home or any part of it while C continues to occupy it as C’s main residence; and

(c) where (b) applies, although interest payments may become due, no full or partial repayment of the credit secured by a mortgage is due or capable of becoming due.

[Note: regulation 3B of SI 1999/2725]
the **firm** must include (or cause to be included) in the quotation the following statement:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE.”

**[Note: regulation 3A of SI 1999/2725]**

(3) When a **firm** provides a quotation to a **customer** (C) in connection with a prospective **credit agreement** which would or might be secured on C’s home, other than an agreement to which (2) applies, the **firm** must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT.”

**[Note: regulation 3b of SI 1999/2725]**

(4) When a **firm** provides a quotation to a **customer** in connection with a prospective **credit agreement** which would or might be secured on **land** and under which **repayments** would be made in a currency other than sterling, the **firm** must include (or cause to be included) in the quotation the following statement:

“THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT.”

**[Note: regulation 4 of SI 1999/2725]**

(5) When a **firm** provides a quotation to a **customer** in connection with a prospective agreement for the bailment of **goods** which would or might be secured on the customer’s home, the **firm** must include (or cause to be included) in the quotation a statement that such security would or might be required.

**[Note: regulation 5a of SI 1999/2725]**

(6) When a **firm** provides a quotation to a **customer** in connection with a prospective agreement for the bailment of **goods** which would or might be secured on the customer’s home, the **firm** must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”

**[Note: regulation 5b of SI 1999/2725]**

**Credit brokers: contents of quotation for certain agreements**

(1) When a **firm** provides a quotation to a **customer** in connection with a prospective **credit agreement** which would or might be secured on the customer’s home, the **firm** must include (or cause to be included)
in the quotation a statement that such security would or might be required.

[Note: regulation 6 of SI 1999/2725]

(2) When a firm provides a quotation to a customer (C) in connection with a prospective credit agreement which would or might be secured on C’s home under which, while C continues to occupy the home as C’s main residence and either:

(a) no instalment repayments of the credit secured by a mortgage on C’s home and no payment of interest on the credit (other than interest charged when all or part of the credit is repaid voluntarily by C), are due or capable of becoming due; or

(b) the lender cannot enforce the credit agreement by taking possession of or selling (or concurring with any other person in selling) the home or any part of it while C continues to occupy it as C’s main residence; and

(c) where (b) applies, although interest payments may become due, no full or partial repayment of the credit secured by a mortgage is due or capable of becoming due;

the firm must include (or cause to be included) in the quotation the following statement:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE.”

(3) When a firm provides a quotation to a customer (C) in connection with a prospective credit agreement which would or might be secured on C’s home, other than an agreement to which (2) applies, the firm must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT.”

(4) When a firm provides a quotation to a customer in connection with a prospective credit agreement which would be secured on land and under which repayments would be made in a currency other than sterling, the firm must include (or cause to be included) in the quotation the following statement:

“THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT.”

(5) When a firm provides a quotation to a customer in connection with a prospective agreement for the bailment of goods which would or might be secured on the customer’s home, the firm must include (or cause to be included) in the quotation a statement that such security would or might be required.

(6) When a firm provides a quotation to a customer in connection with a prospective agreement for the bailment of goods which would or might be secured on the customer’s home, the firm must include (or cause to be included) in the quotation the following statement:
“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”

**Interpretation: quotations**

(1) Paragraphs (2) to (5) apply to §CONC 4.1.3 R and §CONC 4.1.4 R (rules on content of quotations).

(2) “Quotation” means any document by which a person gives a customer information about the terms on which the person or a lender or owner is prepared to do business, but it does not include:

(a) a communication which is also a financial promotion;

(b) any document given to a customer under section 58 of the CCA (opportunity for withdrawal from prospective land mortgage);

(c) any document sent to a customer for signature which embodies the terms or such of them as it is intended to reduce to writing of a credit agreement or a consumer hire agreement; or

(d) any copy of an unexecuted agreement delivered or sent to a customer under section 62 of the CCA (duty to supply copy of unexecuted agreement).

(3) Where the words of a statement which must be included in a quotation are specified, the statement must be:

(a) in capital letters;

(b) clear and legible; and

(c) prominent.

(4) Providing a quotation includes making a quotation available temporarily.

(5) In these rules as they apply to Scotland:

(a) any reference to bailment is a reference to hiring; and

(b) any reference to a mortgage or a charge on land is a reference to a standard security over land within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970.

**For the purposes of §CONC 4.1.5R(3)(c), a statement included in a quotation will not be treated as prominent unless it is presented, in relation to the other content of the quotation, in such a way that it is likely that the attention of the average customer to whom such a quotation is addressed would be drawn to it.**
4.2 Pre-contract disclosure and adequate explanations

Application

This section, unless otherwise stated in or in relation to a rule:

1. applies to a firm with respect to consumer credit lending;

2. applies to a firm with respect to credit broking where the firm has or takes on responsibility for providing the disclosures and explanations to customers required by this section;

3. does not apply to an agreement under which the lender provides the customer with credit which exceeds £60,260, unless the agreement is a residential renovation agreement;

4. does not apply to an agreement secured on land; and

5. does not apply to a borrower-lender agreement enabling the customer to overdraw on a current account other than such an agreement which would be an authorised non-business overdraft agreement, but for the fact that the credit is not repayable on demand or within three months.

[Note: section 74(1D) of CCA]

Other disclosure requirements

1. The disclosure regulations made under section 55 of the CCA which require information to be disclosed before a regulated credit agreement is made remain in force.

2. Failure to comply with the disclosure regulations has the effect that agreements are enforceable against a borrower or hirer (as defined in the CCA) only with an order of court and enforcement for that
CONC 4 : Pre-contractual requirements

Section 4.2 : Pre-contract disclosure and adequate explanations

-purpose includes a retaking of goods or land to which the agreement relates.

(3) Other relevant disclosure requirements are found in CONC 2.7 (distance marketing) and CONC 2.8 (electronic commerce), the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/ 2095), the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) and the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) and the Cancellation of Contracts made in the Consumer's home etc Regulations 2008 (SI 2008/1816).

4.2.4

The pre-contractual information disclosed under the disclosure regulations and the pre-contractual explanations required under CONC 4.2.5 R should take into account any preferences expressed, or information provided by, the customer where the firm would in principle agree to offer credit on such terms.

[Note: paragraph 3.13 (box) of ILG]

Pre-contractual adequate explanations

4.2.5

(1) Before making a regulated credit agreement the firm must:

(a) provide the customer with an adequate explanation of the matters referred to in (2) in order to place the customer in a position to assess whether the agreement is adapted to the customer's needs and financial situation;

(b) advise the customer:
   (i) to consider the information which is required to be disclosed under section 55 of the CCA; and
   (ii) where the information is disclosed in person, that the customer is able to take it away;

(c) provide the customer with an opportunity to ask questions about the agreement; and

(d) advise the customer how to ask the firm for further information and explanation.

[Note: section 55A(1) of CCA]

(2) The matters referred to in (1)(a) are:

(a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;

(b) how much the customer will have to pay periodically and, where the amount can be determined, in total under the agreement;

(c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the customer is unlikely to foresee;

(d) the principal consequences for the customer arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon
the type and amount of credit and the circumstances of the customer:

(i) the total cost of the debt growing;
(ii) incurring any default charges or interest for late or missed payment or under-payment;
(iii) impaired credit rating and its effect on future access to or cost of credit;
(iv) legal proceedings, including reference to charging orders (or, in Scotland, inhibitions), and to the associated costs of such proceedings;
(v) repossession of the customer’s home or other property; and
(vi) where an article is taken in pawn, that the article might be sold, if not redeemed; and
(e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.

[Note: section 55A(2) of CCA and paragraph 3.13 of ILG]

(3) The adequate explanation and advice in (1) may be given orally or in writing, except where (4) or (4A) applies.

[Note: section 55A(3) of CCA]

(4) Where the matters in (2)(a), (b) or (e) are given orally or to the customer in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the customer.

[Note: section 55A(4) of CCA]

(4A) The explanation of the matters in ■ CONC 4.2.15R(3A) must be given to the customer both orally and in a durable medium.

(5) Paragraphs (1) to (4A) do not apply to a lender if a credit broker has complied with those sub-paragraphs in respect of the agreement.

[Note: section 55A(5) of CCA]

(6) Where the regulated credit agreement is an agreement under which a person takes an article in pawn:

(a) the requirement in (1)(a) only relates to the matters in (2)(d) and (e); and
(b) the requirements in (1)(b) and (d) do not apply.

[Note: section 55A(7) of CCA]

(7) This rule does not apply to:

(a) a non-commercial agreement;
(b) a small borrower-lender-supplier agreement for restricted-use credit

[Note: section 74(1) of CCA]

(8) [deleted]
The explanation provided by a lender or a credit broker under 4.2.5 R should enable the customer to make a reasonable assessment as to whether the customer can afford the credit and to understand the key associated risks.

In deciding on the level and extent of explanation required by 4.2.5 R, the lender or credit broker should consider (and each of them should ensure that anyone acting on its behalf should consider), to the extent appropriate to do so, factors including:

1. the type of credit being sought;
2. the amount and duration of credit to be provided;
   the actual and potential costs of the credit;
3B. the risk to the customer arising from the credit (the risk to the customer is likely to be greater the higher the total cost of the credit relative to the customer’s financial situation);
3C. the purpose of the credit, if the lender or (as the case may be) the credit broker knows what that purpose is;
4. to the extent it is evident and discernible, the customer’s level of understanding of the agreement, and of the information and the explanation provided about the agreement; and
4. the channel or medium through which the credit transaction takes place.

(1) 4.2.5R(1) requires the customer to be provided with an adequate explanation of the matters in 4.2.5R(2). Where there is more than one customer acting together as ‘joint borrowers’, the lender or credit broker should consider whether it may be appropriate to give separate explanations to each customer and whether the explanation should be the same or different for each, rather than giving a single explanation to all of them jointly. (Where the borrower is a partnership or an unincorporated association, the members or partners may be treated as a single customer.)

(2) In deciding whether it is appropriate to give separate explanations to each customer, and in determining the level and extent of explanation required for each customer, the lender or credit broker should consider the factors in 4.2.7G separately for each customer.
(3) However, CONC 4.2.5R(4) does not require an oral explanation of the matters in CONC 4.2.5R(2)(c) and (d) to be given to one customer simply because an oral explanation of the matters in CONC 4.2.5R(2)(a), (b) or (e) was given to a different customer.

4.2.8 R Where the regulated credit agreement is high-cost short-term credit, the lender or a credit broker must explain under CONC 4.2.5R(1)(a) that entering into that agreement would be unsuitable to support sustained borrowing over long periods and would be expensive as a means of longer term borrowing.

[Note: paragraph 3.13 (box) of ILG]

4.2.9 R Even where a customer states or implies that there is no need for an explanation of the regulated credit agreement, the lender or credit broker must continue to comply with CONC 4.2.5 R.

[Note: paragraph 3.10 of ILG]

4.2.10 R A lender or a credit broker must not encourage or induce a customer to waive the rights in CONC 4.2.5 R.

[Note: paragraph 3.10 of ILG]

4.2.11 R Before a lender concludes that CONC 4.2.5R (1) to CONC 4.2.5R(4A) do not apply to it in relation to a regulated credit agreement by virtue of CONC 4.2.5R(5), the lender must take reasonable steps to satisfy itself that an explanation of that agreement complying with CONC 4.2.5 R has been provided to the customer by the credit broker.

[Note: paragraph 3.11 (box) of ILG]
4.2.12 R The lender or the credit broker must enable a customer to request and obtain further information and explanation about a regulated credit agreement without incurring undue cost or delay.

[Note: paragraph 3.16 (box) of ILG]

4.2.13 R Neither a lender nor a credit broker may require a customer to acknowledge that the information and explanations it has provided are adequate to satisfy the requirements of □ CONC 4.2.5 R.

[Note: paragraph 3.30 (box) of ILG]

4.2.14 G A lender or credit broker may require an acknowledgement that it has provided an explanation, and of receipt of any written information that forms a part of the explanation, but not an acknowledgement as to its adequacy. □ CONC 4.2.13 R does not prevent the lender or credit broker asking if the customer has understood an explanation given.

[Note: paragraph 3.30 (box) of ILG]

Adequate explanations in relation to particular regulated credit agreements

4.2.15 R The following information must be provided by the lender or a credit broker as part of, and in addition to that provided under, the adequate explanation required by □ CONC 4.2.5 R, where applicable, in the specified cases:

(1) for credit token agreements:
   (a) different rates of interest and different charges apply to different elements of the credit provided (for example, a higher cost of withdrawing cash);
   (b) the implications of only making minimum repayments;
   (c) interest rates or charges may be increased;
   (d) where applicable, the interest rates may be increased based on the risks presented by the individual customer;
   (e) except in relation to retail revolving credit except in relation to retail revolving credit, the limitations on any zero percentage or low interest or other introductory offer; and
   (f) conditions on any balance transfers, including any fees and charges which may apply;

(2) for credit card cheques, the higher associated costs relative to payment by credit card;

(3) for home credit loan agreements and high-cost short-term credit, the effect of refinancing (within the meaning in □ CONC 6.7.17 R) or otherwise extending the duration of the credit or of the credit agreement;

(3A) for a home credit loan agreement that would refinance an existing home credit loan agreement and also involve an increase in the amount of principal outstanding, and where an alternative option
could be entering into a separate home credit loan agreement with the lender for the amount of the additional principal, the information must include an explanation of the difference, if any, between the weekly amount payable and the total amount repayable for a refinanced loan as compared to the situation where the borrower enters into a separate, concurrent loan. If the regular period after which the next payment is due is not weekly but a different period, then the lender must refer to that other period.

(4) for bill of sale loan agreements:
(a) the risk of losing the asset which is the subject of the bill of sale and the loss this could entail;
(b) that repossession can take place without a court order;
(c) that repossession may not clear the debt owed; and
(d) unlike in the case of hire-purchase agreements and conditional sale agreements, the customer is not protected under this arrangement from repossession of the asset where one third or more of the total amount payable has been paid off;

(5) for hire purchase agreements and conditional sale agreements:
(a) the customer does not own the goods until the sums required under the agreements have been paid, including any option to purchase fee and any other conditions have been satisfied;
(b) goods can be repossessed without a court order in the event of default, unless in relation to a regulated credit agreement the customer has paid a third or more of the total amount payable;

(6) for a credit agreement which is used to consolidate existing debts of the customer (whether to the same lender or to another person) and where applicable in each case:
(a) the effect of consolidating the debts will involve payment of a higher rate of interest or charges or both (if the relevant information about existing debts is known to the lender or credit broker);
(b) the effect of consolidating the debts will involve increasing the period required for repayment (if the relevant information about existing debts is known to the lender or credit broker); and
(c) the credit agreement would be secured on the customer’s property;

(7) for a credit agreement which includes a condition requiring a guarantor, the requirement for the customer to provide security in the form of a guarantee.

(8) for retail revolving credit, the limitations that apply to any zero percentage or low interest, introductory or other promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of that interest or those charges and the amount of principal on which the interest would be charged. If, for example, failing to meet the conditions for the application of the offer would result in interest being charged at a higher rate, or from the date of the purchase of the goods or services or on the total purchase price.
of the goods or services without account being taken of repayments made during the offer period, this must be included in the adequate explanation.

[Note: paragraph 4.26c of CBG]

[Note: paragraph 3.13 of ILG]

4.2.16 G

(1) Where a customer does not have a good understanding of the English language, the lender or credit broker may need to consider alternative methods of providing relevant information concerning the explanation required by CONC 4.2.5 R in order for the customer to make an informed decision, such as, providing the information to a person with such understanding who can assist the customer, for example, a friend or relative.

[Note: paragraph 3.4 (box) of ILG]

(2) The explanation in CONC 4.2.15R(3A) should enable a customer to easily understand the different costs of refinancing as opposed to keeping the existing loan and taking out an additional concurrent loan, for example by indicating whether the periodic instalments and/or the total amounts payable are higher or lower.

Guidance for adequate explanations where agreements are marketed by distance or electronic means

4.2.17 G

Since the use of distance means of communication (such as the internet) by their nature limit the lender’s or credit broker’s ability to ascertain the customer’s level of understanding of explanations provided, a lender or credit broker using those means may, for example, wish to provide local rate telephone number for customers who wish to seek further explanation.

[Note: paragraph 3.6 (box) of ILG]

4.2.18 G

Interaction is an important part of compliance with the requirement in CONC 4.2.5R (1), for example, where the agreement is marketed and concluded by electronic means. For an online application, the requirement in CONC 4.2.5R (1)(c) (the right to ask questions) may be complied with by the customer being able to access an appropriately comprehensive set of answers to frequently asked questions about the agreement or by being able to speak to a representative of the online provider.

[Note: paragraph 3.8 (box) of ILG]

4.2.19 G

For a regulated credit agreement marketed and concluded by electronic means to comply with CONC 4.2.5 R the customer should pass through screens containing the required information and explanations, giving the customer the opportunity to see and read the explanations provided. Merely providing a link to where such information can be found is unlikely to satisfy the requirements in CONC 4.2.5 R, where the agreement can be concluded without accessing the link.

[Note: paragraph 3.15 (box) of ILG]
For telephone or face-to-face transactions, interaction between the customer and the firm’s representative is also important. It should be made clear to the customer that the customer can ask questions or request further information or explanation and, for example, the representative solely providing the customer with a written explanation of an agreement, or relying solely on a written script in relation to an agreement, is unlikely to comply with the requirement in §CONC 4.2.5 R.

[Note: paragraph 3.9 (box) of ILG]

Where a regulated credit agreement is a modifying agreement under section 82(2) of the CCA, the requirements in §CONC 4.2 apply before the agreement is made.

[Note: paragraph 3.12 of ILG]

Credit agreements where there is a guarantor etc

(1) This rule applies if:

(a) a firm is to enter into a regulated credit agreement; and

(b) an individual other than the borrower (in this rule referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both) in relation to the regulated credit agreement.

(2) The firm must, before making the regulated credit agreement, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed decision as to whether to act as the guarantor in relation to the regulated credit agreement.

(3) The matters are:

(a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and

(b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.

(4) For the purposes of (2), the rules and guidance listed in (5) apply as if:

(a) references to the customer were references to the guarantor; and

(b) references to §CONC 4.2.5 R were references to this rule.

(5) The rules and guidance are:

(a) §CONC 4.2.6 G to §CONC 4.2.7AG;

(b) §CONC 4.2.9 R and §CONC 4.2.10 R;

(c) §CONC 4.2.12 R to §CONC 4.2.14 G; and

(d) §CONC 4.2.16 G to §CONC 4.2.21 G.

(6) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.
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4.2.23  
(1) CONC 4.2.22R does not apply to a lender if a credit broker, a solicitor, a barrister, (in Scotland) an advocate, or a relevant person has complied with that rule in respect of the agreement.

(2) Before a lender concludes that CONC 4.2.22R does not apply to it in relation to a regulated credit agreement by virtue of (1), the lender must take reasonable steps to satisfy itself that:

(a) an explanation complying with CONC 4.2.22R(2) has been provided to the guarantor; and

(b) the following had been provided to the person giving the explanation, before the explanation was given:

(i) a copy of the agreement;

(ii) if the guarantee or the indemnity (or both) is contained in a document other than the agreement, a copy of that document; and

(iii) a copy of any other document or information in writing relating to the agreement which had been provided to the guarantor by the lender or the credit broker.

(3) In this rule, “relevant person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), and is not a solicitor, a barrister or (in Scotland) an advocate.

4.2.24  
CONC 4.2.23R permits the explanation required by CONC 4.2.22R to be given by a credit broker. It also permits the explanation to be given by a solicitor, a barrister, a Scottish advocate or another “relevant person” (for example, in the course of giving independent legal advice to the guarantor). The explanation may only be given by such a person if the information and documents listed in that rule had been provided to that person.
4.3 Pre-contractual requirements and adequate explanations: P2P agreements

Application

4.3.1 This section applies to a firm with respect to operating an electronic system in relation to lending.

4.3.2 This section (apart from CONC 4.3.6 R) does not apply to:

1. an agreement under which the lender provides the prospective borrower with credit which exceeds £60,260, unless the agreement is a residential renovation agreement; or
2. an agreement secured on land.

4.3.3 For the agreements referred to in CONC 4.3.2 R, a firm should consider whether it is necessary or appropriate to provide explanations of the matters in CONC 4.5.3 R (2), in particular, a firm should consider highlighting key risks to the borrower including the consequences of missing payments or underpaying, including, where applicable, the risk of repossession of the borrower’s property.

[Note: section 55A(6) of CCA and paragraph 3.1 of ILG]

[Note: Until the end of 30 September 2014, transitional provisions apply to CONC 4.3.3 G: see CONC TP 4.1]

Pre-contractual requirements

4.3.3A (1) This rule applies if the lender, or the prospective lender, under a P2P agreement is, or would be, carrying on by way of business the regulated activity of entering into a regulated credit agreement as lender by entering into the agreement.

(2) Any fee to be paid by the borrower to the operator of an electronic system in relation to lending must be agreed between the borrower and the operator, and that agreement must be recorded in writing or other durable medium before the P2P agreement is entered into.

(3) The operator of an electronic system in relation to lending must disclose to the lender the fee, if any, for its activity payable by the borrower.
borrower for the purpose of enabling the lender to calculate the annual percentage rate of charge for the P2P agreement.

[Note: article 21(b) and (c) of the Consumer Credit Directive]

Adequate explanations

(1) Before a P2P agreement is made, the firm must:
   (a) provide the prospective borrower with an adequate explanation of the matters referred to in (2) in order to place the borrower in a position to assess whether the agreement is adapted to the borrower’s needs and financial situation;
   (b) where the P2P agreement is not a non-commercial agreement, advise the prospective borrower:
      (i) to consider the information which is required to be disclosed under section 55(1) of the CCA; and
      (ii) where the information is disclosed in person, that the borrower is able to take it away;
   (c) provide the prospective borrower with an opportunity to ask questions about the agreement; and
   (d) advise the prospective borrower how to ask the firm for further information and explanation.

(2) The matters referred to in (1)(a) are:
   (a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;
   (b) how much the borrower will have to pay periodically and, where the amount can be determined, in total under the agreement;
   (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the borrower in a way which the prospective borrower is unlikely to foresee;
   (d) the principal consequences for the borrower arising from a failure to make payments under the agreement at the times required by the agreement, including legal proceedings and, where this is a possibility, repossession of the borrower’s home; and
   (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.

(3) Except where (4) applies, the adequate explanation and advice in (1) may be given orally or in writing.

(4) Where the matters in (2)(a), (b) or (e) are given orally or to the prospective borrower in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the borrower.

(5) Where this rule applies to a borrower-lender agreement to finance the making of payments arising on or connected with the death of a person, this rule applies to the agreement to the extent the payments are:
(a) inheritance tax chargeable in the UK on the death of any person;

(b) fees payable to a court:
   (i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;
   (ii) in Scotland, in connection with a grant of confirmation; and
   (iii) in the UK, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and

(c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.

[Note: section 74(1F) of CCA and SI 1983/1554]

[Note: Until the end of 30 September 2014, transitional provisions apply to CONC 4.3.4 R: see CONC TP 4.1]

4.3.5 Where CONC 4.3.4 R applies to a firm, the firm must comply with the rules, and observe the guidance, in CONC 4.2 to the same extent as if it were the lender under an agreement to which those rules apply.

[Note: Until the end of 30 September 2014, transitional provisions apply to CONC 4.3.5 R: see CONC TP 4.1]

4.3.6 Before a P2P agreement which is secured on the borrower's home is made, a firm must in a prominent way give the following warning:

“YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT”

4.3.7 For the purposes of CONC 4.3.6R, a warning will not be treated as prominent unless it is presented in such a way that it is likely that the attention of the average customer would be drawn to it.

P2P agreements where there is a guarantor etc

4.3.8 (1) This rule applies if:

   (a) a firm with permission to carry on the activity of operating an electronic system in relation to lending is to facilitate the entry into a P2P agreement;

   (b) the prospective borrower is an individual; and

   (c) an individual other than the borrower (in this rule referred to as “the guarantor") is to provide a guarantee or an indemnity (or both) in relation to the P2P agreement.

(2) The firm must, before the P2P agreement is made, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed
decision as to whether to act as the guarantor in relation to the P2P agreement.

(3) The matters are:
   (a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and
   (b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.

(4) For the purposes of (2), the rules and guidance listed in (5) apply as if:
   (a) references to the customer were references to the guarantor;
   (b) references to CONC 4.2.5R were references to this rule; and
   (c) references to the regulated credit agreement were references to the P2P agreement.

(5) The rules and guidance are:
   (a) CONC 4.2.6G to CONC 4.2.7AG;
   (b) CONC 4.2.9R and CONC 4.2.10R;
   (c) CONC 4.2.12R to CONC 4.2.14G; and
   (d) CONC 4.2.16G to CONC 4.2.21G.

(6) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.
4.4 Pre-contractual requirements: credit brokers

Application

4.4.1 R This section applies to a firm carrying on credit broking in relation to a regulated credit agreement.

4.4.1A R CONC 4.4.3 R applies to a firm carrying on credit broking whether or not it is in relation to a regulated credit agreement.

Pre-contractual requirements

4.4.2 R (1) A firm must disclose to the customer the fee, if any, payable by a customer to the firm for its services.

[Note: section 160A(4) of CCA]

(2) Any fee to be paid by the customer to the firm must be agreed between the customer and the firm, and that agreement must be recorded in writing or other durable medium before a regulated credit agreement is entered into.

[Note: section 160A(4) of CCA]

(3) A firm must disclose to the lender the fee, if any, for its activity payable by the customer for the purpose of enabling the lender to calculate the annual percentage rate of charge for the credit agreement.

[Note: section 160A(5) of CCA]

(4) A firm must disclose to the customer how and when any fee for its service is payable and in what circumstances a refund may be payable, including how and when a refund is available under section 155 of the CCA.

[Note: paragraphs 2.2 and 4.17b of CBG]

[Note: article 21(b) and (c) of the Consumer Credit Directive]
Credit broking information notice

4.4.3 ▪

(1) A firm must not:

(a) request, claim, demand, initiate or take payment of a charge from a customer, or from the customer’s payment account, in connection with services it has provided or is to provide; or

(b) if the purpose, or one of the purposes, is to collect such a charge from a customer, invite or induce a customer to provide information in relation to a payment card or instrument that would enable a payment from the customer’s payment account to be initiated by or through the firm or a third party or facilitate the provision of that information by a customer;

unless that firm has met the conditions in both (2) and (3) in respect of that charge.

(2) The first condition referred to in (1) is that the firm has sent a notice on paper or in another durable medium to the customer setting out the following clearly, concisely and in plain language (in this rule and ▪ CONC 4.4.5 G referred to as the “information notice”):

(a) the legal name of the firm as it appears in the Financial Services Register;

(b) if the firm is not a lender, a statement that the firm is a credit broker and that it is not a lender;

(c) if the firm is also a lender, a statement that the firm is acting as a credit broker and that it is not acting as a lender;

(d) a statement that the customer will be required, or (where relevant) may be required, to pay a charge in connection with the firm’s services;

(e) the amount of the charge, or, where that amount is not ascertainable at the time the notice is sent, the basis on which it will be calculated; and

(f) when and by what method the firm will initiate or take payment of the charge.

(3) The second condition referred to in (1) is that the firm has received from the customer a reply to the information notice (in this rule and ▪ CONC 4.4.5 G referred to as the “customer confirmation”) on paper or in another durable medium in which the customer acknowledges receipt of the information notice and confirms that he is aware of its contents.

(4) The information notice may also contain the firm’s trading name, address and other contact details but must not contain any other statements or information additional to those required by (2).

(5) For the purposes of this rule:

(a) references to “charge” include any fee, charge or financial consideration however described;

(b) it is immaterial whether the charge is payable to the firm or to a third party.

(6) The firm must keep a record of:
(a) each information notice; and
(b) each customer confirmation.

4.4.4 R■ CONC 4.4.3 R does not apply where:

(1) the customer indicates to the firm that he wishes to enter into a credit agreement secured by a legal or equitable mortgage on land;

(2) the firm makes it clear to the customer that it is willing to carry on credit broking for that customer only in relation to credit agreements secured by a legal or equitable mortgage on land; and

(3) the firm does not indicate (by express words or otherwise) that it is willing to carry on credit broking for that customer in relation to credit agreements other than credit agreements secured by a legal or equitable mortgage on land.

4.4.5 G(1)■ CONC 4.4.3 R prohibits a firm from asking a customer for any payment details, including the card number and security code of a debit card or a credit card, or using those payment details, without first sending an information notice to the customer and receiving a customer confirmation.

(2)■ CONC 4.4.3 R applies in respect of any sum due from a customer, however it is described and irrespective of whether it is payable to the firm or a third party (for example, a firm cannot avoid the application of this rule by describing a charge as a "membership fee" or a "web registration fee"). The fact that a fee or charge may be financed by credit does not take the fee or charge outside the rule.

(3) The information notice must not contain anything other than the statements and information required by ■ CONC 4.4.3 R (2), except for the firm’s trading name, address and other contact details. It should set out the required information clearly and concisely, in plain language. The information notice must be sent to the customer in a durable medium, for example on paper, as an email, or as an attachment to an email: it is insufficient to make the notice available on a website or to email a link to a webpage that contains the relevant information and statements.

(4) The firm should not ask for or take the customer’s payment details until it has received the customer confirmation. This means, for example, that firms should construct their websites so that customers cannot access any webpage that enables them to input their payment details before they have received the information notice and given the customer confirmation.

(5)■ CONC 4.4.3 R applies to each firm in a chain of credit brokers separately. If firm A introduces the customer to firm B (where B is a credit broker), any information notice given by A cannot cover fees which B might charge: B will have to issue its own information notice to the customer, and the customer will have to provide a separate
customer confirmation, before B can ask for or make use of the customer’s payment details.

(6) CONC 4.4.3 R does not apply to credit broking that relates only to credit agreements secured on land.
**4.5 Commissions**

**Application**

4.5.1 **R**

(1) **CONC 4.5.2 G** applies to a firm with respect to consumer credit lending.

(2) **CONC 4.5.3 R** and **CONC 4.5.4 R** apply to a firm with respect to credit broking in relation to:

   (a) regulated credit agreements; and

   (b) regulated consumer hire agreements.

(3) **CONC 4.5.3 R** and **CONC 4.5.4 R** also apply to a firm carrying on the activities specified in article 36A(1)(a) or (c) of the Regulated Activities Order in relation to:

   (a) credit agreements that would be regulated credit agreements but for the relevant provisions; and

   (b) consumer hire agreements that would be regulated consumer hire agreements but for articles 60O and 60Q of the Regulated Activities Order.

**Commissions lenders to credit brokers**

4.5.2 **G**

A lender should only offer to, or enter into with, a firm a commission agreement providing for differential commission rates or providing for payments based on the volume and profitability of business where such payments are justified based on the extra work of the firm involved in that business.

[Note: paragraph 5.5 (box) of ILG]

**Commissions: credit brokers**

4.5.3 **R**

A credit broker must disclose to a customer in good time before a credit agreement or a consumer hire agreement is entered into, the existence of any commission or fee or other remuneration payable to the credit broker by the lender or owner or a third party in relation to a credit agreement or a consumer hire agreement, where knowledge of the existence or amount of the commission could actually or potentially:

(1) affect the impartiality of the credit broker in recommending a particular product; or
(2) have a material impact on the customer’s transactional decision.

[Note: paragraph 3.7i (box) and 3.7j of CBG and 5.5 (box) of ILG]

4.5.4 At the request of the customer, a credit broker must disclose to the customer, in good time before a regulated credit agreement or a regulated consumer hire agreement is entered into, the amount (or if the precise amount is not known, the likely amount) of any commission or fee or other remuneration payable to the credit broker by the lender or owner or a third party.

[Note: paragraph 3.7i (box) of CBG]
4.6 Pre-contract disclosure: continuous payment authorities

Application

4.6.1 (1) This section applies to:

(a) a firm with respect to consumer credit lending; or
(b) a firm with respect to consumer hiring; or
(c) a firm with respect to operating an electronic system in relation to lending in relation to a prospective borrower under a P2P agreement.

Disclosure of continuous payment authorities

4.6.2 (1) Before entering into a regulated credit agreement or regulated consumer hire agreement, or before a P2P agreement is entered into, under which the customer may grant a continuous payment authority, the firm must provide the customer with an adequate explanation of the matters in (2).

(2) The matters referred to in (1) are:

(a) what a continuous payment authority is and how it works;
(b) how the continuous payment authority will be applied by the firm, including where the firm provides high-cost short-term credit that it may only be used twice to collect the whole sum due in relation to the agreement or where the agreement provides for repayment in instalments, in relation to an instalment;
(c) how the customer can cancel the continuous payment authority;
(d) whether alternative repayment options are available;
(e) the choice of an appropriate due date for payment;
(f) the choice of an alternative payment date (if applicable);
(g) the consequences if sufficient funds are not available on the due date (or an alternative payment date if agreed);
(h) whether further attempts may be made to collect payment and, if so, the basis on which further attempts would be made, the days or period over which the further attempts would be made and the frequency of the further attempts;
(i) other than in relation to high-cost short-term credit, whether part payment (a sum due which less than the full sum due at the time the firm’s payment request is made) may be sought and, if
so, the basis on which and frequency with which payment would be sought and whether part payments would be subject to a minimum amount or percentage;

(j) in relation to high-cost short-term credit, the firm will not seek part payment (a sum due which is less than the full sum due at the time the firm’s payment request is made) unless the firm is willing to accept such less sum and, after being notified of that sum and when a payment request would be made, the customer has given express consent to the firm to make such a payment request; and

(k) whether default fees and other charges may be added and, if so, the circumstances in which these may be incurred and the amount of such fees and charges or the basis on which they will be calculated.

[Note: paragraph 3.9miii of DCG]

4.6.3 A firm must include the terms of the continuous payment authority, in plain and intelligible language, as part of the credit agreement or consumer hire agreement presented to the customer or P2P agreement presented to the borrower.

[Note: paragraph 3.9miii of DCG]

4.6.4 [deleted]

Agreements where there is a guarantor etc

4.6.5 (1) This rule applies if:

(a) a firm is to enter into a regulated credit agreement or a regulated consumer hire agreement, or is to facilitate the entry into a P2P agreement;

(b) an individual other than the borrower or the hirer (in this rule referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both) in relation to the regulated credit agreement, the regulated consumer hire agreement or the P2P agreement; and

(c) the guarantor is to grant a continuous payment authority.

(2) The firm must, before the guarantor provides the guarantee or the indemnity, provide the guarantor with an adequate explanation of the matters in CONC 4.6.2R(2).

(3) For the purposes of (2), CONC 4.6.2R(2) applies as if references to the customer were references to the guarantor.

(4) The firm must include the terms of the continuous payment authority, in plain and intelligible language, in the document that includes the guarantee or the indemnity (or both).

(5) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.
Application

This section applies to a firm with respect to consumer credit lending.

Information on entering into current account

(1) When a firm enters into a current account agreement where:
   (a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and
   (b) if the account-holder did so, this would be a regulated credit agreement;

   the current account agreement must contain the information in (2) and (3).

   [Note: section 74A(1) of CCA]

(2) The information required by (1) is:
   (a) the rate of interest charged on the amount by which the account-holder overdraws on the current account or exceeds the pre-arranged overdraft limit;
   (b) any conditions applicable to that rate;
   (c) any reference rate on which that rate is based;
   (d) information on any changes to that rate of interest (including the periods that the rate applies to and any conditions or procedure applicable to changing that rate); and
   (e) any other charges payable by the account holder under the agreement (and the conditions under which those charges may be varied).

   [Note: section 74A(2) of CCA]

(3) Where different rates of interest are charged in different circumstances, the firm must provide the information in (2)(a) to (d) in respect of each rate.

   [Note: section 74A(4) of CCA]

[Note: article 18 of the Consumer Credit Directive]
4.8 Pre-contract: unfair business practices: consumer credit lending

Application

4.8.1 This section applies to a firm carrying on consumer credit lending.

Unfair business practices

4.8.2 A firm must not unfairly encourage, incentivise or induce a customer to enter into a regulated credit agreement quickly without allowing the customer time to consider the pre-contract information under section 55 of the CCA and the explanations provided under CONC 4.2.5 R.

[Note: paragraph 5.10 of ILG]

4.8.3 Stating an end date for a promotion would not amount to the behaviour in CONC 4.8.2 R.

[Note: paragraph 5.10 (box) of ILG]

4.8.4 A firm must not unfairly encourage, incentivise or induce a customer to enter into a regulated credit agreement for an amount higher than the customer requests.

[Note: paragraph 5.11 of ILG]

4.8.5 Merely offering a customer more credit than the customer requested would not amount to the behaviour in CONC 4.8.4 R where:

1. the offer of the higher amount was based on a proper creditworthiness assessment; or

2. the firm offers more advantageous terms, conditions or prices to customers for larger loans, provided that such offers are sufficiently transparent and a proper creditworthiness assessment has been carried out;

and the customer was not pressurised or unfairly coerced into accepting the higher amount of credit.

[Note: paragraph 5.11 (box) of ILG]
4.8.6 R A firm must not lead a customer to believe that the customer’s current debt repayments can be reduced under a regulated credit agreement over the same term when this is not the case.

[Note: paragraph 5.13 of ILG]
Chapter 5

Responsible lending
5.1 Application [deleted]
5.2 Creditworthiness assessment: before agreement [deleted]
5.2A Creditworthiness assessment

Application

5.2A.1 Subject to CONC 5.2A.2R, this section applies to a firm with respect to consumer credit lending.

5.2A.2 This section does not apply to:

1. an agreement under which a firm takes an article in pawn and under the terms of the agreement:
   a. the customer's total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article pawned by the customer; and
   b. the effect of the passing of property in the pawned article to the firm under section 120 of the CCA, or of a sale of the article under section 121 of the CCA, would, therefore, be (at the very least) to discharge the debt secured by the pawn and any other obligation to pay a sum of money under the agreement including any expenses of sale;

2. a current account agreement where:
   a. there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and
   b. if the account-holder did so, this would be a regulated credit agreement (overrunning);

3. a non-commercial agreement; or

4. a small borrower-lender-supplier agreement which is a restricted-use credit agreement.

Interpretation

5.2A.3 In this section, references to ‘repayment’ refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a regulated credit agreement or any charge payable by the customer under a hire-purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates).
Creditworthiness assessment

5.2A.4 R

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

(1) entering into a regulated credit agreement; or

(2) significantly increasing the amount of credit provided under a regulated credit agreement; or

(3) significantly increasing a credit limit for running-account credit under a regulated credit agreement.

5.2A.5 R

The firm must not take a step in CONC 5.2A.4R(1) to (3) unless it can demonstrate that it has, before doing so:

(1) undertaken a creditworthiness assessment and, where relevant, the assessment under CONC 5.2A.31R(2) (guarantors) in accordance with the rules set out in this section; and

(2) had proper regard to the outcome of that assessment in respect of affordability risk.

5.2A.6 G

If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last creditworthiness assessment, a cumulative increase that is significant, then a further creditworthiness assessment is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.

5.2A.7 R

A firm must base its creditworthiness assessment on sufficient information:

(1) of which it is aware at the time the creditworthiness assessment is carried out;

(2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and

the information must enable the firm to carry out a reasonable creditworthiness assessment.

5.2A.8 G

CONC 5.2A.20R to CONC 5.2A.25G contain rules and guidance in relation to the factors that should be taken into account in an individual case when deciding how much information is sufficient for the purposes of the creditworthiness assessment, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

5.2A.9 R

Rules and guidance in this section apply in relation to carrying out a creditworthiness assessment.
The subject matter of the creditworthiness assessment

5.2A.10 R The firm must consider:

(1) the risk that the customer will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and

(2) the risk to the customer of not being able to make repayments under the agreement in accordance with CONC 5.2A.12R (referred to as ‘affordability risk’ in this section).

5.2A.11 G In relation to CONC 5.2A.10R, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the creditworthiness assessment.

5.2A.12 R The firm must consider the customer’s ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an open-end agreement, within a reasonable period;

(2) out of, or using, one or more of the following:
   (a) the customer’s income;
   (b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement; and/or
   (c) savings or other assets where the customer has indicated clearly an intention to repay (wholly or partly) using them;

(3) without the customer having to borrow to meet the repayments;

(4) without failing to make any other payment the customer has a contractual or statutory obligation to make; and

(5) without the repayments having a significant adverse impact on the customer’s financial situation.

5.2A.13 R If the customer intends to make repayments (wholly or partly) using savings or other assets, the firm must take into account:

(1) the purpose for which the savings or assets are or will be held;

(2) the likelihood of the savings or assets being available to make repayments under the agreement; and

(3) any significant adverse impact on the customer’s financial situation of using those savings or assets.
When considering affordability risk, the *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

### The customer’s income and expenditure

1. This rule applies unless:
   - the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *customer* is able to make repayments in accordance with CONC 5.2A.12R, so as to make the actions described in (2) to (4) disproportionate; or
   - the *customer* has indicated clearly an intention to repay wholly using savings or other assets (see CONC 5.2A.13R).

2. The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *customer’s* current income.

3. Where it is reasonably foreseeable that there is likely to be a reduction in the *customer’s* income:
   - during the term of the agreement; or
   - in the case of an *open-end agreement*, during the likely duration of the *credit* (see CONC 5.2A.26R),
     which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that reduction.

4. The *firm* must take account of the *customer’s* income it has determined or estimated in accordance with (2) and (3).

5. The *firm* may only take into account an expected future increase in the *customer’s* income where the *firm* reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

1. A *firm* that proposes to rely on the exception in CONC 5.2A.15R(1)(a) should keep in mind that the burden would be on the *firm* to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the *customer’s* income disproportionate.

2. An estimate of the *customer’s* income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

3. For the purpose of considering the *customer’s* income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the *customer* without independent evidence (for example, in the form of information supplied by a *credit reference agency* or documentation of a third party supplied by the third party or by the *customer*).
(4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out. If, in such a case, the customer's income does not increase in line with expectations, the firm should consider deferring or limiting the obligation to repay until the customer's income has reached an appropriate level.

(5) Income can include income other than salary and wages.

5.2A.17 R

(1) This rule:

(a) applies only where CONC 5.2A.15R also applies; and

(b) does not apply where the firm can demonstrate that it is obvious in the circumstances of the particular case that the customer's non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.

(2) The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure.

(3) Where it is reasonably foreseeable that there is likely to be an increase in the customer's non-discretionary expenditure:

(a) during the term of the agreement; or

(b) in the case of an open-end agreement, during the likely duration of the credit (see CONC 5.2A.26R),

which could have a material impact on affordability risk, the firm must take reasonable steps to estimate the amount of that increase.

(4) The firm must take account of the customer's non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).

(5) The firm may only take into account an expected future decrease in non-discretionary expenditure where the firm reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an open-end agreement, during the likely duration of the credit.

5.2A.18 G

(1) Non-discretionary expenditure referred to in CONC 5.2A.17R includes payments needed to meet priority debts and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the customer has a contractual or statutory obligation to make, such as payment obligations arising under a credit agreement or a mortgage contract. Where there is a reasonable expectation that the customer will have responsibility to pay only a share or a part of a payment required pursuant to a contractual or statutory obligation then the firm may, in appropriate cases, take this into account.
An analysis of the size of the customer’s debts compared to the customer’s income may therefore form part of the creditworthiness assessment where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in CONC 5.2A.20R.

Non-discretionary expenditure includes expenditure for other persons whose financial obligations the customer meets wholly or in part. Where the firm has under CONC 5.2A.12R(2)(b) taken into account income received by the customer jointly with another person or income received by a person other than the customer it should also take into account non-discretionary expenditure relating to that other person. In those circumstances, references in this section to non-discretionary expenditure of the customer should be taken to include the non-discretionary expenditure of the other person.

An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

Where the firm can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the customer’s income therefore applies, the firm is similarly not required to determine or estimate the customer’s non-discretionary expenditure.

(1) For the purpose of considering the customer’s non-discretionary expenditure under CONC 5.2A.17R, the firm may take into account statistical data unless it knows or has reasonable cause to suspect that the customer’s non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the customer’s situation.

(2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the firm is aware, or has reasonable cause to be aware from information in its possession, that the composition of the customer’s household, or the number of dependants that the customer has, or the level of the customer’s existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

Scope, extent and proportionality of assessment

(1) The extent and scope of the creditworthiness assessment, and the steps that the firm must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.

(2) The firm must consider:
   (a) the types of information to use in the creditworthiness assessment;
   (b) the content and level of detail of the information to use;
   (c) whether the information in the firm’s possession is sufficient;
(d) whether and to what extent to obtain additional information from the customer;

(e) whether and to what extent to obtain information from a credit reference agency;

(f) any other sources of information to use;

(g) whether and to what extent to verify the accuracy of the information that is used;

(h) the degree of evaluation and analysis of the information that is used; and

(i) the steps to take to determine or estimate the customer’s income or non-discretionary expenditure (where such a determination or estimate is required),

having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the firm must have regard when complying with (2) and deciding what steps are needed to make the creditworthiness assessment a reasonable one include each of the following where applicable to the agreement:

(a) the type of credit;

(b) the amount of the credit or, where applicable, the credit limit;

(c) the duration (or likely duration) of the credit;

(d) the frequency of the repayments;

(e) the amounts of the repayments;

(f) the total amount payable;

(g) the total charge for credit;

(h) the annual percentage rate of charge;

(i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the customer under a hire-purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates) is fixed or variable;

(j) any other costs which will or may be payable by or on behalf of the customer in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the customer under a hire-purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates; and

(k) any other potential adverse consequences for the customer arising under the agreement from a failure to make a repayment by the due date.

(1) The firm may have regard, where appropriate, to the purpose for which the customer intends to use the credit.

(2) When considering, having regard to the factors in CONC 5.2A.20R, what steps the firm needs to undertake to make the creditworthiness assessment a reasonable one, the firm should consider whether the
factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the firm should weigh up the factors before deciding what type of creditworthiness assessment is required.

5.2A.22 G The firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that:

(1) the customer is in, has recently experienced, or is likely to experience, financial difficulties (see ■ CONC 1.3); or

(2) the customer is particularly vulnerable, for example because the customer has mental health difficulties or mental capacity limitations (see ■ CONC 2.10 and ■ CONC 7.2).

5.2A.23 G The firm may have regard, where appropriate, to information obtained in the course of previous dealings with the customer. However, the firm should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

5.2A.24 G The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.

Factors that will affect that level of risk include the actual or potential cost of the credit and the total amount payable in absolute terms and relative to the customer’s financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the total charge for credit are low, the amount of information that is sufficient to support a reasonable creditworthiness assessment may be less than would be required:

(a) in the case of more expensive credit or credit that is higher in amount; or

(b) where it is known that the customer’s financial situation is such that the credit may be expected to have a more significant impact.

5.2A.25 G (1) In relation to ■ CONC 5.2A.24G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:

(a) the total value of the customer’s outstanding debts relative to the customer’s income is high; or

(b) there is a high likelihood that the customer will not make repayments under the agreement by their due dates.

(2) In relation to ■ CONC 5.2A.25G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.
In relation to an open-end agreement, the firm must make a reasonable assumption about the likely duration of the credit which should take into account:

1. the terms and conditions of the agreement;
2. any pre-contractual disclosure and explanation given to the customer under the CCA or CONC; and
3. the customer’s intentions, where known to the firm.

Assumptions in relation to running-account credit

1. In relation to entering into a regulated credit agreement for running-account credit, the firm must assume that the customer draws down the entire credit limit at the earliest opportunity and repays by equal instalments over a reasonable period.

2. In relation to significantly increasing the credit limit that applies to an existing regulated credit agreement for running-account credit, the firm must assume that the customer draws down the entire available balance up to the increased credit limit at the earliest opportunity and repays by equal instalments over a reasonable period.

3. If, after considering the individual circumstances of the particular customer of which the firm is aware at the time the creditworthiness assessment is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of credit and repayments over the duration or likely duration of the credit, then the firm must do so and these assumptions must be reasonable ones.

4. The firm must set the credit limit in the light of the assumptions in (1) to (3).

1. Unless (2) applies, the firm should, when making an assumption about the length of a reasonable period for repayment for the purposes of CONC 5.2A.27R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the credit limit. The firm should take into account the terms and conditions of a loan likely to be available to that customer (whether from the firm or from another lender) and any other factors that the firm reasonably considers to be relevant.

2. If, however, after considering the individual circumstances of the particular customer of which the firm is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the firm may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the customer complied with those terms, the drawdown of the credit limit would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent amount.
(3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of CONC 5.2A.27R(3), in addition to the assumptions described in CONC 5.2A.27R(1) or (2). In those circumstances, the firm should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of its customers in relation to that product or type of product, or of customers of that type generally, but should also consider any factors particular to the individual customer, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in CONC 5.2A.27R(1) or (2), as well as in respect of the subsequent duration of the credit, depending on those factors.

Lending to joint borrowers and businesses

5.2A.29

The firm may need to take into account the different circumstances that may surround a customer where the customer is borrowing for business purposes. For example, it may be reasonable to take into account the customer’s business plan, although the creditworthiness assessment should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the customer is less regular than for other types of customer.

5.2A.30

(1) Where there are customers acting together as joint borrowers, the firm should consider whether it may be appropriate to carry out a creditworthiness assessment separately for each customer (as well as one for them together), having regard to the risk to that customer arising from the agreement were the customer to be treated as being solely responsible for obligations of the joint borrowers under the agreement.

(2) Where the borrower is a partnership or one or more members of an unincorporated association acting as agent for other such members, the partners or members may be treated as a single customer for the purposes of the creditworthiness assessment.

Creditworthiness assessment where there is a guarantor

5.2A.31

(1) This rule applies if, in relation to a regulated credit agreement:

(a) an individual other than the borrower (in this section referred to as ‘the guarantor’) is to provide a guarantee or an indemnity (or both) (in this rule and CONC 5.2A.32G referred to as ‘the guarantee’); and

(b) the firm is required to undertake a creditworthiness assessment in respect of the borrower.

(2) Before entering into the regulated credit agreement or significantly increasing the amount of credit provided under the agreement or significantly increasing a credit limit for running-account credit under the agreement, the firm must undertake a reasonable assessment of the potential for the guarantor’s commitments in respect of the agreement to have a significant adverse impact on the guarantor’s financial situation.
(3) The firm must base the assessment under (2) on sufficient information:
   (a) of which it is aware at the time the assessment is carried out;
   (b) obtained, where appropriate, from the guarantor or from the borrower on the guarantor’s behalf, and where necessary from a credit reference agency, and
   the information must enable the firm to carry out a reasonable assessment.

(4) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

(1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the borrower, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.

(2) If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last assessment under ▲ CONC 5.2A.31R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.

(3) In this guidance, references to ‘payment’ refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).

(4) The firm should, when carrying out an assessment under ▲ CONC 5.2A.31R(2), have regard to ▲ CONC 5.2A.8G to ▲ CONC 5.2A.24G(1) (excluding ▲ CONC 5.2A.9R, ▲ CONC 5.2A.14R, ▲ CONC 5.2A.16G(4), ▲ CONC 5.2A.20R(3) and ▲ CONC 5.2A.21G(1)), ▲ CONC 5.2A.29G and ▲ CONC 5.2A.30G but as if:
   (a) each of those provisions that is a rule were guidance and as if ‘should’ appeared in that rule instead of ‘must’ or ‘may’;
   (b) references to ‘agreement’ are to the ‘guarantee’;
   (c) subject to (g) below, references to ‘the customer’ or ‘borrower’ are references to the ‘guarantor’;
   (d) references to ‘repayments’ are references to ‘payments’;
   (e) references to ‘repay’ are references to ‘pay’;
   (f) references to the ‘creditworthiness assessment’ are references to the assessment under ▲ CONC 5.2A.31R(2);
   (g) references in ▲ CONC 5.2A.20R(2)(d) and ▲ CONC 5.2A.23G to ‘the customer’ are to the ‘guarantor’ as well as ‘the customer’; and
   (h) the reference in ▲ CONC 5.2A.20R(2) to the factors listed in ▲ CONC 5.2A.20R(3) is to the factors listed in ▲ CONC 5.2A.32G(5).

(5) The factors to which the firm should have regard for the purposes of ▲ CONC 5.2A.19R(2) when deciding what steps should be taken to make the assessment under ▲ CONC 5.2A.31R(2) a reasonable one include each of the following:
   (a) the total potential liability of the guarantor under the guarantee;
(b) the duration (or likely duration) of the guarantee;
(c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and
(d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.

(6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor’s financial circumstances, where known.

(7) The provision of the guarantee, and the reasonable assessment of the guarantor under CONC 5.2A.31R(2), do not remove or reduce the obligation on the firm to carry out a reasonable creditworthiness assessment of the borrower. Firms are reminded of the rule in CONC 5.2A.14R that, in considering affordability risk for the borrower, a firm must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of security.

Policies and procedures for creditworthiness assessment

A firm must:

5.2A.33

establish, implement and maintain clear and effective policies and procedures:

(a) to enable it to carry out creditworthiness assessments or assessments under CONC 5.2A.31R(2); and

(b) setting out the principal factors it will take into account in carrying out creditworthiness assessments or assessments under CONC 5.2A.31R(2);

set out the policies and procedures in (1) in writing, and (other than in the case of a sole trader) have them approved by its governing body or senior personnel;

assess and periodically review:

(a) the effectiveness of the policies and procedures in (1); and

(b) the firm’s compliance with those policies and procedures and with its obligations under CONC 5.2A;

in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the firm’s compliance with its obligations;

maintain a record, on paper or in electronic form, of each transaction where a regulated credit agreement is entered into, or where there is a significant increase in the amount of credit provided under a regulated credit agreement or a credit limit for running-account credit under a regulated credit agreement, sufficient to demonstrate that:
(a) a creditworthiness assessment or an assessment under CONC 5.2A.31R(2) was carried out where required; and

(b) the creditworthiness assessment or the assessment under CONC 5.2A.31R(2) was reasonable and was undertaken in accordance with CONC 5.2A,

and so to enable the FCA to monitor the firm’s compliance with its obligations under CONC 5.2A; and

(Other than in the case of a sole trader) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the firm’s compliance with (1) to (5).

5.2A.34  Firms are reminded of the guidance on record-keeping in SYSC 9.1.4G and 9.1.5G.

Unfair business practices

5.2A.35  A firm must not complete some or all of those parts of an application for credit under a regulated credit agreement intended to be completed by the customer, without the consent of the customer or unless the customer has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.2A.36  A firm must not accept an application for credit under a regulated credit agreement where the firm knows or has reasonable cause to suspect that the customer has not been truthful in completing the application in relation to information relevant to the creditworthiness assessment.

5.2A.37  An example of when a firm has reasonable cause to suspect that the customer has not been truthful may be where information supplied by the customer concerning income or employment status is clearly inconsistent with other information of which the firm is aware.
5.3 Conduct of business in relation to creditworthiness and affordability [deleted]
**5.4 Conduct of business: credit brokers**

**Application**

This section applies to a **firm** with respect to **credit broking**.

**Conduct of business**

1. In giving explanations or advice, or in making recommendations, a **firm** must pay due regard to the **customer's** needs and circumstances.

2. In complying with (1) a **firm** must pay due regard to whether the **credit** product is affordable and whether there are any factors that the **firm** knows, or reasonably ought to know, that may make the product unsuitable for that **customer**.

   [Note: paragraphs 4.32 to 4.36 of CBG]

3. A **firm** which undertakes to search the product market or a part of it before effecting an introduction must, before doing so, search the product market to the extent stated to the **customer**.

   [Note: paragraph 4.41j of CBG]
Section 5.5: Creditworthiness assessment: P2P agreements [deleted]
5.5A Creditworthiness assessment: P2P agreements

Application

Subject to CONC 5.5A.2, this section applies to a firm with respect to operating an electronic system in relation to lending in relation to a borrower or a prospective borrower under a P2P agreement.

This section does not apply in relation to:

1. an agreement under which a person takes an article in pawn and under the terms of the agreement:
   a. the borrower’s total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article pawned by the borrower; and
   b. the effect of the passing of property in the pawned article to the person under section 120 of the CCA, or of a sale of the article under section 121 of the CCA, would, therefore, be (at the very least) to discharge the debt secured by the pawn and any other obligation to pay a sum of money under the agreement including any expenses of sale; or

2. a current account agreement where:
   a. there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and
   b. if the account-holder did so, this would be a P2P agreement (overrunning).

This section contains rules and guidance that apply to a person operating an electronic system that facilitates persons becoming lenders and borrowers under P2P agreements, in contrast to CONC 5.2A which applies to a lender engaged in consumer credit lending.

Where CONC 5.2A applies to a lender, and CONC 5.5A applies to the person operating the electronic system, each will be subject to a separate obligation to undertake a creditworthiness assessment. However, firms are reminded of SYSC 8 which permits outsourcing of operational functions subject to certain requirements (and with the
firm outsourcing functions remaining fully responsible for discharging all of its obligations under the regulatory system).

Interpretation

5.5A.4 In this section, references to ‘repayment’ refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a P2P agreement or any charge payable by the borrower under a hire-purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates) and references to a ‘borrower’ include, where the context so allows, references to a prospective borrower.

Creditworthiness assessment

5.5A.5 A firm must undertake a reasonable assessment of the creditworthiness of a borrower before:

(1) a P2P agreement is made; or

(2) the amount of credit provided under a P2P agreement is significantly increased; or

(3) a credit limit for running-account credit under a P2P agreement is significantly increased.

5.5A.6 The firm must not facilitate the taking of a step in 5.5A.5R(1) to (3) unless it can demonstrate that it has, before doing so:

(1) undertaken a creditworthiness assessment and, where relevant, the assessment under 5.5A.32R(2) (guarantors) in accordance with the rules set out in this section; and

(2) had proper regard to the outcome of that assessment in respect of affordability risk.

5.5A.7 If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last creditworthiness assessment, a cumulative increase that is significant, then a further creditworthiness assessment is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.

5.5A.8 A firm must base its creditworthiness assessment on sufficient information:

(1) of which it is aware at the time the creditworthiness assessment is carried out;

(2) obtained, where appropriate, from the borrower, and where necessary from a credit reference agency, and

the information must enable the firm to carry out a reasonable creditworthiness assessment.
5.5A.9 Rules and guidance in this section apply in relation to carrying out a creditworthiness assessment.

5.5A.10 The subject matter of the creditworthiness assessment

The firm must consider:

(1) the risk that the borrower will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and

(2) the risk to the borrower of not being able to make repayments under the agreement in accordance with CONC 5.5A.13 (referred to as ‘affordability risk’ in this section).

5.5A.11 In relation to CONC 5.5A.11, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the creditworthiness assessment.

5.5A.12 The firm must consider the borrower’s ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an open-end agreement, within a reasonable period;

(2) out of, or using, one or more of the following:

(a) the borrower’s income;

(b) income from savings or assets jointly held by the borrower with another person, income received by the borrower jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the borrower to make repayments under the agreement; and/or

(c) savings or other assets where the borrower has indicated clearly an intention to repay (wholly or partly) using them;

(3) without the borrower having to borrow to meet the repayments;

(4) without failing to make any other payment the borrower has a contractual or statutory obligation to make; and

(5) without the repayments having a significant adverse impact on the borrower’s financial situation.

5.5A.13 If the borrower intends to make repayments (wholly or partly) using savings or other assets, the firm must take into account:
CONC 5 : Responsible lending

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5.5A.15  When considering affordability risk, the firm must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of security.

The borrower’s income and expenditure

5.5A.16  (1) This rule applies unless:

(a) the firm can demonstrate that it is obvious in the circumstances of the particular case that the borrower is able to make repayments in accordance with 5.5A.13, so as to make the actions described in (2) to (4) disproportionate; or

(b) the borrower has indicated clearly an intention to repay wholly using savings or other assets (see 5.5A.14).

(2) The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the borrower’s current income.

(3) Where it is reasonably foreseeable that there is likely to be a reduction in the borrower’s income:

(a) during the term of the agreement; or

(b) in the case of an open-end agreement, during the likely duration of the credit (see 5.5A.27),

which could have a material impact on affordability risk, the firm must take reasonable steps to estimate the amount of that reduction.

(4) The firm must take account of the borrower’s income it has determined or estimated in accordance with (2) and (3).

(5) The firm may only take into account an expected future increase in the borrower’s income where the firm reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an open-end agreement, during the likely duration of the credit.

5.5A.17  (1) A firm that proposes to rely on the exception in 5.5A.16(1)(a) should keep in mind that the burden would be on the firm to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the borrower’s income disproportionate.

(2) An estimate of the borrower’s income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.
(3) For the purpose of considering the borrower's income under CONC 5.2A.16R, it is not generally sufficient to rely solely on a statement of current income made by the borrower without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the borrower).

(4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out.

(5) Income can include income other than salary or wages.

5.5A.18 R

(1) This rule:

(a) applies only where CONC 5.5A.16R also applies; and

(b) does not apply where the firm can demonstrate that it is obvious in the circumstances of the particular case that the borrower's non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.

(2) The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the borrower's current non-discretionary expenditure.

(3) Where it is reasonably foreseeable that there is likely to be an increase in the borrower's non-discretionary expenditure:

- during the term of the agreement; or

- in the case of an open-end agreement, during the likely duration of the credit (see CONC 5.5A.27R),

which could have a material impact on affordability risk, the firm must take reasonable steps to estimate the amount of that increase.

(4) The firm must take account of the borrower's non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).

(5) The firm may only take into account an expected future decrease in non-discretionary expenditure where the firm reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an open-end agreement, during the likely duration of the credit.

5.5A.19 G

(1) Non-discretionary expenditure referred to in CONC 5.5A.18R includes payments needed to meet priority debts and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the borrower has a contractual or statutory obligation to make, such as payment obligations arising under a credit agreement or a mortgage contract. Where there is a reasonable expectation that the borrower will have responsibility to pay only a share or a part of a payment required
pursuant to a contractual or statutory obligation then the *firm* may, in appropriate cases, take this into account.

(2) An analysis of the size of the *borrower’s* debts compared to the *borrower’s* income may therefore form part of the *creditworthiness assessment* where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in CONC 5.5A.21R.

(3) Non-discretionary expenditure includes expenditure for other *persons* whose financial obligations the borrower meets wholly or in part. Where the *firm* has under CONC 5.5A.13R(2)(b) taken into account income received by the *borrower* jointly with another *person* or income received by a *person* other than the *borrower* it should also take into account non-discretionary expenditure relating to that other *person*. In those circumstances, references in this section to non-discretionary expenditure of the *borrower* should be taken to include the non-discretionary expenditure of the other *person*.

(4) An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

(5) Where the *firm* can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the *borrower’s* income therefore applies, the *firm* is similarly not required to determine or estimate the *borrower’s* non-discretionary expenditure.

(1) For the purpose of considering the *borrower’s* non-discretionary expenditure under CONC 5.5A.18R, the *firm* may take into account statistical data unless it knows or has reasonable cause to suspect that the *borrower’s* non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the *borrower’s* situation.

(2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the *firm* is aware, or has reasonable cause to be aware from information in its possession, that the composition of the *borrower’s* household, or the number of dependants that the *borrower* has, or the level of the *borrower’s* existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

**Scope, extent and proportionality of assessment**

(1) The extent and scope of the *creditworthiness assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.

(2) The *firm* must consider:

(a) the types of information to use in the *creditworthiness assessment*;
(b) the content and level of detail of the information to use;
(c) whether the information in the firm's possession is sufficient;
(d) whether and to what extent to obtain additional information from the borrower;
(e) whether and to what extent to obtain information from a credit reference agency;
(f) any other sources of information to use;
(g) whether and to what extent to verify the accuracy of the information that is used;
(h) the degree of evaluation and analysis of the information that is used; and
(i) the steps to take to determine or estimate the borrower's income or non-discretionary expenditure (where such a determination or estimate is required),

having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the firm must have regard when complying with (2) and deciding what steps are needed to make the creditworthiness assessment a reasonable one include each of the following where applicable to the agreement:

(a) the type of credit;
(b) the amount of the credit or, where applicable, the credit limit;
(c) the duration (or likely duration) of the credit;
(d) the frequency of the repayments;
(e) the amounts of the repayments;
(f) the total amount payable;
(g) the total charge for credit or the cost of credit;
(h) the annual percentage rate of charge;
(i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the borrower under a hire-purchase agreement in respect of an option to purchase the goods to which the agreement relates) is fixed or variable;
(j) any other costs which will or may be payable by or on behalf of the borrower in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the borrower under a hire-purchase agreement in respect of an option to purchase the goods to which the agreement relates; and
(k) any other potential adverse consequences for the borrower arising under the agreement from a failure to make a repayment by the due date.

(1) The firm may have regard, where appropriate, to the purpose for which the borrower intends to use the credit.
(2) When considering, having regard to the factors in
CONC 5.5A.21R, what steps the firm needs to undertake to make the creditworthiness assessment a reasonable one, the firm should consider whether the factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the firm should weigh up the factors before deciding what type of creditworthiness assessment is required.

5.5A.23

The firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that:

(1) the borrower is in, has recently experienced, or is likely to experience, financial difficulties (see CONC 1.3); or

(2) the borrower is particularly vulnerable, for example because the borrower has mental health difficulties or mental capacity limitations (see CONC 2.10 and CONC 7.2).

5.5A.24

The firm may have regard, where appropriate, to information obtained in the course of previous dealings with the borrower. However, the firm should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

5.5A.25

(1) The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.

(2) Factors that will affect that level of risk include the actual or potential cost of the credit and the total amount payable (or, where the P2P agreement is not a regulated credit agreement, the sum of the cost of credit plus the credit limit or the total sums made available under the P2P agreement, as well as any advance payment) in absolute terms and relative to the borrower’s financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the total charge for credit are low, the amount of information that is sufficient to support a reasonable creditworthiness assessment may be less than would be required:

(a) in the case of more expensive credit or credit that is higher in amount; or

(b) where it is known that the borrower’s financial situation is such that the credit may be expected to have a more significant impact.

5.5A.26

(1) In relation to CONC 5.5A.25G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:

(a) the total value of the borrower’s outstanding debts relative to the borrower’s income is high; or
(b) there is a high likelihood that the borrower will not make repayments under the agreement by their due dates.

(2) In relation to CONC 5.5A.26G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

Open-end agreements

5.5A.27 R

In relation to an open-end agreement, the firm must make a reasonable assumption about the likely duration of the credit which should take into account:

(1) the terms and conditions of the agreement;

(2) any pre-contractual disclosure and explanation given to the borrower under the CCA or CONC; and

(3) the borrower’s intentions, where known to the firm.

Assumptions in relation to running-account credit

5.5A.28 R

(1) In relation to a lender entering into a P2P agreement for running-account credit, the firm must assume that the borrower draws down the entire credit limit at the earliest opportunity and repays by equal instalments over a reasonable period.

(2) In relation to a lender significantly increasing the credit limit that applies to an existing P2P agreement for running-account credit, the firm must assume that the borrower draws down the entire available balance up to the increased credit limit at the earliest opportunity and repays by equal instalments over a reasonable period.

(3) If, after considering the individual circumstances of the particular borrower of which the firm is aware at the time the creditworthiness assessment is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of credit and repayments over the duration or likely duration of the credit, then the firm must do so and these assumptions must be reasonable ones.

(4) The firm must take reasonable steps to procure the lender under the P2P agreement to set the credit limit in the light of the assumptions in (1) to (3).

5.5A.29 G

(1) Unless (2) applies, the firm should, when making an assumption about the length of a reasonable period for repayment for the purposes of CONC 5.5A.28R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the credit limit. The firm should take into account the terms and conditions of a loan likely to be available to that borrower (whether from the lender under the P2P agreement or from another lender) and any other factors that the firm reasonably considers to be relevant.
(2) If, however, after considering the individual circumstances of the particular borrower of which the firm is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the firm may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the borrower complied with those terms, the drawdown of the credit limit would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent amount.

(3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of CONC 5.5A.28R(3), in addition to the assumptions described in CONC 5.5A.28R(1) or (2). In those circumstances, the firm should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of borrowers under P2P agreements which it has facilitated, or of borrowers of that type generally, but should also consider any factors particular to the individual borrower, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in CONC 5.5A.28R(1) or (2), as well as in respect of the subsequent duration of the credit, depending on those factors.

Lending to joint borrowers and businesses

5.5A.30

The firm may need to take into account the different circumstances that may surround a borrower where the borrower is borrowing for business purposes. For example, it may be reasonable to take into account the borrower’s business plan, although the creditworthiness assessment should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the borrower is less regular than for other types of borrower.

5.5A.31

(1) Where there are borrowers acting together as joint borrowers, the firm should consider whether it may be appropriate to carry out a creditworthiness assessment separately for each borrower (as well as one for them together), having regard to the risk to that borrower arising from the agreement were the borrower to be treated as being solely responsible for obligations of the joint borrowers under the agreement.

(2) Where the borrower is a partnership or one or more members of an unincorporated association acting as agent for other such members, the members or partners may be treated as a single borrower for the purposes of the creditworthiness assessment.

Creditworthiness assessment where there is a guarantor

5.5A.32

(1) This rule applies if, in relation to a P2P agreement:

(a) an individual other than the borrower (in this section referred to as ‘the guarantor’) is to provide a guarantee or an indemnity (or both) (in this rule and CONC 5.2A.33G referred to as ‘the guarantee’); and
(b) the firm is required to undertake a creditworthiness assessment in respect of the borrower.

(2) Before the P2P agreement is made or the amount of credit provided under the agreement is significantly increased or a credit limit for running-account credit under the agreement is significantly increased, the firm must undertake a reasonable assessment of the potential for the guarantor’s commitments in respect of the agreement to have a significant adverse impact on the guarantor’s financial situation.

(3) The firm must base the assessment under (2) on sufficient information:
   (a) of which it is aware at the time the assessment is carried out;
   (b) obtained, where appropriate, from the guarantor or from the borrower on the guarantor’s behalf, and where necessary from a credit reference agency, and

   the information must enable the firm to carry out a reasonable assessment.

(4) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

(1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the borrower, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.

(2) If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last assessment under CONC 5.5A.32R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.

(3) In this guidance, references to payment refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).

(4) The firm should, when carrying out an assessment under CONC 5.5A.32R(2), have regard to CONC 5.5A.9G to CONC 5.5A.25G(1) (excluding CONC 5.5A.10R, CONC 5.5A.15R, CONC 5.5A.17G(4), CONC 5.5A.21R(3) and CONC 5.5A.22G(1)), CONC 5.5A.30G and CONC 5.5A.31G but as if:
   (a) each of those provisions that is a rule were guidance and as if ‘should’ appeared in that rule instead of ‘must’ or ‘may’;
   (b) references to ‘agreement’ are to the ‘guarantee’;
   (c) subject to (g) below, references to ‘the borrower’ are references to the ‘guarantor’;
   (d) references to ‘repayments’ are references to ‘payments’;
   (e) references to ‘repay’ are references to ‘pay’;
   (f) references to the ‘creditworthiness assessment’ are references to the assessment under CONC 5.5A.32R(2);
   (g) references in CONC 5.5A.21R(2)(d) and CONC 5.5A.24G to the borrower are to the ‘guarantor’ as well as ‘the borrower’; and
(h) the reference in CONC 5.5A.21R(2) to the factors listed in CONC 5.5A.21R(3) is to the factors listed in CONC 5.5A.33G(5).

(5) The factors to which the firm should have regard for the purposes of CONC 5.5A.21R(2) when deciding what steps should be taken to make the assessment under CONC 5.5A.32R(2) a reasonable one include each of the following:

(a) the total potential liability of the guarantor under the guarantee;
(b) the duration (or likely duration) of the guarantee;
(c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and
(d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.

(6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor’s financial circumstances, where known.

(7) The provision of the guarantee, and the reasonable assessment of the guarantor under CONC 5.5A.32R(2), do not remove or reduce the obligation on the firm to carry out a reasonable creditworthiness assessment of the borrower. Firms are reminded of the rule in CONC 5.5A.15R that, in considering affordability risk for the borrower, a firm must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of security.

Policies and procedures for creditworthiness assessment

A firm must:

(1) establish, implement and maintain clear and effective policies and procedures:

(a) to enable it to carry out creditworthiness assessments or assessments under CONC 5.5A.32R(2); and

(b) setting out the principal factors it will take into account in carrying out creditworthiness assessments or assessments under CONC 5.5A.32R(2);

(2) set out the policies and procedures in (1) in writing, and (other than in the case of a sole trader) have them approved by its governing body or senior personnel;

(3) assess and periodically review:

(a) the effectiveness of the policies and procedures in (1); and

(b) the firm’s compliance with those policies and procedures and with its obligations under CONC 5.5A;
(4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the firm’s compliance with its obligations;

(5) maintain a record, on paper or in electronic form, of each transaction where a P2P agreement is entered into, or where there is a significant increase in the amount of credit provided under a P2P agreement or a credit limit for running-account credit under a P2P agreement, sufficient to demonstrate that:

(a) a creditworthiness assessment or an assessment under CONC 5.5A.32R(2) was carried out where required; and

(b) the creditworthiness assessment or the assessment under CONC 5.5A.32R(2) was reasonable and was undertaken in accordance with CONC 5.5A, and so to enable the FCA to monitor the firm’s compliance with its obligations under CONC 5.5A; and

(6) (other than in the case of a sole trader) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the firm’s compliance with (1) to (5).

5.5A.35 Firms are reminded of the guidance on record-keeping in SYSC 9.1.4G and 9.1.5G.

Unfair business practices

5.5A.36 A firm must not complete some or all of those parts of an application for credit under a P2P agreement intended to be completed by the borrower, without the consent of the borrower or unless the borrower has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.5A.37 A firm must inform the prospective lender under a P2P agreement where the firm knows or has reasonable cause to suspect that the borrower has not been truthful in completing the application for credit under the P2P agreement in relation to information relevant to the creditworthiness assessment.

5.5A.38 An example of when a firm has reasonable cause to suspect that the borrower has not been truthful may be where information supplied by the borrower concerning income or employment status is clearly inconsistent with other information of which the firm is aware.
Chapter 5A

Cost cap for high-cost short-term credit
CONC 5A : Cost cap for high-cost short-term credit

Section 5A.1 : Application, purpose and guidance

5A.1 Application, purpose and guidance

Application

5A.1.1 R
This chapter applies to:

(1) a firm with respect to an agreement for high-cost short-term credit entered into on or after 2 January 2015; or

(2) a firm with respect to an agreement entered into on or after 2 January 2015 which varies or supplements an agreement for high-cost short-term credit which imposes one or more charges; or

(3) a firm with respect to the exercise of a contractual power on or after 2 January 2015 to vary or supplement an agreement for high-cost short-term credit which imposes one or more charges.

5A.1.2 G
(1) A variation or supplement of, or an exercise of a contractual power to vary or supplement, an agreement for high-cost short-term credit made before 2 January 2015 will be covered by this chapter if it has the result that a new charge, or an increase in an existing charge, is payable.

(2) An example of where a charge results from a variation or supplement is where the duration of an agreement made before 2 January 2015 is extended and a further charge by way of interest or otherwise is calculated by reference to the period of the extension. A variation or supplement which alters the address of the borrower stated in the agreement or which is followed by the firm permanently waiving any right to interest or charges which would otherwise be imposed or result does not fall within 5A.1.1 R (2) or 5A.1.1 R (3).

(3) If this chapter applies to an agreement for high-cost short-term credit as a result of 5A.1.1 R (2) or 5A.1.1 R (3), charges imposed under the agreement before 2 January 2015 are to be included in the calculation of the total cost cap, the initial cost cap and the default cap. If charges imposed before 2 January 2015 exceed the total cost cap, the initial cost cap or the default cap, a variation or supplement of that credit agreement on or after 2 January 2015 that results in any additional charge is not permitted.

5A.1.3 G
Firms are reminded that, as a result of GEN 2.2.1 R, the provisions of this chapter have to be interpreted in the light of their purpose.
Statutory context and purpose

Section 137C of the Act (FCA general rules: cost of credit and duration of credit agreements) as amended by the Financial Services (Banking Reform) Act 2013 places a duty on the FCA to make general rules with a view to securing an appropriate degree of protection for borrowers against excessive charges.

In accordance with that duty, the purpose of this chapter is:

1. to specify the descriptions of regulated credit agreement appearing to the FCA to involve the provision of high-cost short-term credit to which this chapter applies by using the definition of high-cost short-term credit set out in the Glossary;
2. to secure an appropriate degree of protection for borrowers against excessive charges; and
3. as a result, to restrict the charges for such high-cost short-term credit.

Guidance on application and interpretation

Examples of the sorts of charge (which expression is defined in CONC 5A.6) applied in connection with the provision of credit covered by this chapter include, but are not limited to:

1. interest on the credit provided;
2. a charge related to late payment by, or default of, the borrower;
3. a charge related to the transmission of credit or for using a means of payment to or from the borrower;
4. a charge related to early repayment, or refinancing or changing the payment date or termination of the agreement;
5. a charge related to the application for, or drawing down of, credit;
6. a charge imposed by a credit broker in the same group or with whom the lender has arrangements to share the charge;
7. a charge for ancillary services related to the provision of credit; and
8. interest on any of the charges referred to in (1) to (7).

Certain other terms used in this chapter are defined in CONC 5A.6.
5A.2  Prohibition from entering into agreements for high-cost short-term credit

Application

5A.2.1  This section applies to:

(1) a firm with respect to consumer credit lending; or

(2) a firm with respect to credit broking.

Cost caps: entering into agreements: Total cost cap

5A.2.2  A firm must not enter into an agreement for high-cost short-term credit that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of credit provided under the agreement.

Cost caps: entering into agreements: Initial cost cap

5A.2.3  A firm must not enter into an agreement for high-cost short-term credit that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of credit provided under the agreement calculated per day from the date on which the borrower draws down the credit until the date on which repayment of the credit is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, the date to which it is postponed.

5A.2.4  A reference to a charge in CONC 5A.2.3 (Initial cost cap) excludes a charge to which CONC 5A.2.14 (Default cap) applies.

5A.2.5  (1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be provided for in an agreement in compliance with this cap can amount to 0.8% of the credit provided (determined in accordance with CONC 5A.2.14) multiplied by the number of days from the date on which the borrower draws down the credit until the date indicated in CONC 5A.2.3.

(2) Where credit is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different
CONC 5A : Cost cap for high-cost short-term credit

Section 5A.2 : Prohibition from entering into agreements for high-cost short-term credit

Determining the amount of credit provided

5A.2.6 The amount of credit provided under an agreement for high-cost short-term credit for the purposes of §CONC 5A.2.2 R (Total cost cap) is the lesser of:

1. the amount of credit that the lender actually advances under the agreement; or
2. the credit limit.

5A.2.7 The amount of credit provided under an agreement for high-cost short-term credit for the purposes of §CONC 5A.2.3 R (Initial cost cap) is the amount of credit outstanding on the day in question under the agreement, disregarding for the purposes of that rule the effect of the borrower discharging all or part of the borrower's indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of credit before the date provided for in the agreement.

5A.2.8 For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of credit repayable under an agreement for high-cost short-term credit (including where that early repayment is financed by a replacement agreement), the amount of credit outstanding on the days that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

5A.2.9 For the purposes of this chapter, where a lender allows a borrower to make a number of drawdowns of credit (which may be expressed to be possible up to a specified amount of credit) but only with the lender's consent to each respective drawdown, each drawdown is a separate agreement for high-cost short-term credit and each agreement needs to be documented as a separate regulated credit agreement in accordance with the CCA and with the rest of CONC. This chapter applies to each drawdown as a separate agreement accordingly.

Refinancing

5A.2.10 A firm must not enter into an agreement for high-cost short-term credit that replaces an earlier agreement for high-cost short-term credit if the replacement agreement provides for the payment by the borrower of one or more charges that, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of credit provided (determined in accordance with §CONC 5A.2.6 R) under the combined effect of the replacement agreement and the earlier agreement.

5A.2.11 A firm must not enter into an agreement for high-cost short-term credit that replaces an earlier agreement for high-cost short-term credit if the
replacement agreement provides for the payment by the borrower of one or more charges in connection with a breach of the agreement by the borrower that, taken together with such charges provided for by the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.2.12

If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for high-cost short-term credit before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of CONC 5A.2.10 R.

5A.2.13

A firm must not count any amount provided to the borrower to repay any amount of credit outstanding under an earlier agreement for high-cost short-term credit or any amount provided to pay any charge outstanding under the earlier agreement:

1. in calculating the amount of credit provided for the purposes of CONC 5A.2.10 R; or
2. where the firm replaces an earlier agreement for high-cost short-term credit, in calculating the amount of credit provided for the purposes of CONC 5A.2.3 R (Initial cost cap).

Default cap

5A.2.14

A firm must not enter into an agreement for high-cost short-term credit if:

1. it provides for one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which alone or in combination (and whether in relation to one breach or cumulatively in relation to multiple breaches of the agreement) exceed or are capable of exceeding £15; or
2. it provides for the payment by the borrower of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per day from the date the charge is payable until the date the charge is paid; or
3. it provides for the payment by the borrower of one or more charges (except for a charge to which (1) or (2) applies), on any amount of credit provided which in breach of the agreement has not been repaid, that alone or in combination exceed or are capable of exceeding 0.8% of that amount calculated per day from the date of the breach until the date that the amount has been repaid.

5A.2.15 Firms are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).
CONC 5A : Cost cap for high-cost short-term credit

Section 5A.2 : Prohibition from entering into agreements for high-cost short-term credit

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**Connected agreements**

Where a borrower or a prospective borrower pays a charge:

1. to a firm, that carries on or has carried on credit broking in relation to an agreement or prospective agreement for high-cost short-term credit, which is in the same group as the firm which is to provide, provides or has provided credit under the agreement for high-cost short-term credit; or

2. to a firm, that carries on or has carried on credit broking in relation to an agreement or prospective agreement for high-cost short-term credit, which shares some or all of that charge with the firm which is to provide, provides or has provided credit under the agreement for high-cost short-term credit;

the reference to a charge in [CONC 5A.2.2 R](#) (Total cost cap) and [CONC 5A.2.3 R](#) (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

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**Prohibition on compound interest**

A firm must not enter into an agreement for high-cost short-term credit, which provides for a charge, by way of interest, other than a charge by way of simple interest.
5A.3 Prohibition from imposing charges under agreements for high-cost short-term credit

Application

5A.3.1 This section applies to:

(1) a firm with respect to consumer credit lending;
(2) a firm with respect to debt administration;
(3) a firm with respect to debt collecting; or
(4) a firm with respect to operating an electronic system in relation to lending.

Cost caps: imposition of charges etc.: Total cost cap

5A.3.2 A firm must not:

(1) impose one or more charges, on a borrower under an agreement for high-cost short-term credit, that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of credit provided under the agreement;

(2) arrange for or instruct another person to take the step described in (1).

Cost caps: imposition of charges etc.: Initial cost cap

5A.3.3 A firm must not impose one or more charges, on a borrower under an agreement for high-cost short-term credit, that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of credit provided under the agreement calculated per day from the date on which the borrower draws down the credit until the date on which repayment of the credit is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, the date to which it is postponed.

5A.3.4 A reference to a charge in CONC 5A.3.3 R (Initial cost cap) excludes a charge to which CONC 5A.3.18 R (Default cap) applies.
CONC 5A : Cost cap for high-cost short-term credit

5A.3.5  
(1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be imposed in compliance with this cap can amount to 0.8% of the credit provided (determined in accordance with CONC 5A.3.7 R) multiplied by the number of days from the date on which the borrower draws down the credit until the date indicated in CONC 5A.3.3 R.

(2) Where credit is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different amounts of credit outstanding and the different durations for which the credit is provided.

Determining the amount of credit provided

5A.6  
The amount of credit provided under an agreement for high-cost short-term credit for the purposes of CONC 5A.3.2 R (Total cost cap) is the lesser of:

(1) the amount of credit that the lender actually advances under the agreement; or

(2) the credit limit.

5A.7  
The amount of credit provided under an agreement for high-cost short-term credit for the purposes of CONC 5A.3.3 R (Initial cost cap) is the amount of credit outstanding on the day in question under the agreement, disregarding for the purposes of that rule the effect of the borrower discharging all or part of the borrower’s indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of credit before the date provided for in the agreement.

5A.8  
For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of credit repayable under an agreement for high-cost short-term credit (including where that early repayment is financed by a replacement agreement), the amount of credit outstanding on the days that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

5A.9  
For the purposes of this chapter, where a lender allows a borrower to make a number of drawdowns of credit (which may be expressed to be possible up to a specified amount of credit) but only with the lender’s consent to each respective drawdown, each drawdown is a separate agreement for high-cost short-term credit and each agreement needs to be documented as a separate regulated credit agreement in accordance with the CCA and with the rest of CONC. This chapter applies to each drawdown as a separate agreement accordingly.

Refinancing

5A.10  
A firm must not impose one or more charges by way of an agreement that varies or supplements an earlier agreement for high-cost short-term credit if the amount of the charge or charges payable by the borrower taken...
CONC 5A : Cost cap for high-cost short-term credit

Section 5A.3 : Prohibition from imposing charges under agreements for high-cost short-term credit

together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of credit provided (determined in accordance with CONC 5A.3.6 R) under the combined effect of the varying or supplemental agreement and the earlier agreement.

5A.3.11 A firm must not impose one or more charges by exercising a contractual power to vary or supplement an agreement for high-cost short-term credit if the amount of the charge or charges payable by the borrower taken together with such charges imposed under the agreement or in a connected agreement to that agreement, exceed or are capable of exceeding the amount of credit provided (determined in accordance with CONC 5A.3.6 R) under the agreement as varied or supplemented.

5A.3.12 A firm must not impose one or more charges in connection with a breach of the agreement by the borrower by way of an agreement that varies or supplements an earlier agreement for high-cost short-term credit if the amount of the charge or charges payable by the borrower, taken together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.13 A firm must not impose one or more charges in connection with a breach of the agreement by the borrower by exercising a contractual power to vary or supplement an agreement for high-cost short-term credit if the amount of the charge or charges payable by the borrower, taken together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.14 A firm must not impose one or more charges under an agreement for high-cost short-term credit that replaces an earlier agreement for high-cost short-term credit if the charge or charges under the replacement agreement, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of credit provided (determined in accordance with CONC 5A.3.6 R) under the combined effect of the replacement agreement and the earlier agreement.

5A.3.15 A firm must not impose one or more charges in connection with a breach of the agreement by the borrower under an agreement for high-cost short-term credit that replaces an earlier agreement for high-cost short-term credit if the charge or charges under the replacement agreement payable by the borrower, taken together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.16 If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for high-cost short-term credit before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of CONC 5A.3.14 R.
A firm must not count any amount provided to the borrower to repay any amount of credit outstanding under an earlier agreement for high-cost short-term credit or any amount provided to pay any charge outstanding under the earlier agreement:

1. in calculating the amount of credit provided for the purposes of CONC 5A.3.10 R, CONC 5A.3.11 R or CONC 5A.3.14 R; or

2. where the firm replaces an earlier agreement for high-cost short-term credit, in calculating the amount of credit provided for the purposes of CONC 5A.3.3 R (Initial cost cap).

A firm must not impose, on a borrower under an agreement for high-cost short-term credit:

1. one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which charges alone or in combination (and whether in relation to one breach or in combination relate to multiple breaches of the agreement) exceed or are capable of exceeding £15;

2. a charge by way of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per day from the date the charge is payable until the date the charge is paid;

3. one or more charges (except for a charge to which (1) or (2) applies), on any amount of credit provided which in breach of the agreement has not been repaid, that alone or in combination, exceed or are capable of exceeding 0.8% of that amount calculated per day from the date of the breach until that amount has been repaid.

Firms are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).

Where a borrower or a prospective borrower pays a charge:

1. to a firm, that carries on or has carried on credit broking in relation to an agreement or prospective agreement for high-cost short-term credit, which is in the same group as the firm which is to provide, provides or has provided credit under the agreement for high-cost short-term credit; or

2. to a firm, that carries on or has carried on credit broking in relation to an agreement or prospective agreement for high-cost short-term credit, which shares some or all of that charge with the firm which is to provide, provides or has provided credit under the agreement for high-cost short-term credit;
the reference to a charge in 5A.3.2 R (Total cost cap) and 5A.3.3 R (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

5A.3.21 R Where a person imposes on a borrower or a prospective borrower, under an agreement for high-cost short-term credit, a charge for an ancillary service to the agreement, the reference to a charge in 5A.3.2 R (Total cost cap), 5A.3.3 R (Initial cost cap) and 5A.3.18 R (Default cap) includes this charge and, if the charge is not provided for under the agreement for high-cost short-term credit, the agreement providing for the charge is a connected agreement.

5A.3.22 G Examples of the types of ancillary service to an agreement for high-cost short-term credit referred to in 5A.3.21 R include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement.

5A.3.23 G Where an agreement passes to another firm by assignment or by operation of law, any charges imposed in connection with the provision of credit under the agreement for high-cost short-term credit before the agreement passed to the firm are included within the charges referred to in 5A.3.

Prohibition on compound interest

5A.3.24 R A firm must not impose a charge under an agreement for high-cost short-term credit, which provides for a charge by way of interest, unless the charge is by way of simple interest.
5A.4 Cost cap for operating an electronic system in relation to lending

Application

5A.4.1 This section applies to a firm with respect to operating an electronic system in relation to lending in relation to a borrower or a prospective borrower under an agreement for high-cost short-term credit.

Cost cap rules for operating electronic systems in relation to lending: Total cost cap

5A.4.2 A firm must not facilitate an individual becoming a borrower under an agreement for high-cost short-term credit that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of credit provided under the agreement.

Cost cap rules for operating electronic systems in relation to lending: Initial cost cap

5A.4.3 A firm must not facilitate an individual becoming a borrower under an agreement for high-cost short-term credit that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of credit provided under the agreement calculated per day from the date on which the borrower draws down the credit until the date on which repayment of the credit is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, it is the date to which it is postponed.

5A.4.4 A reference to a charge in CONC 5A.4.3 R excludes a charge to which CONC 5A.4.14 R (Default cap) applies.

5A.4.5 (1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be provided for in an agreement in compliance with this cap can amount to 0.8% of the credit provided (determined in accordance with CONC 5A.4.7 R) multiplied by the number of days from the date on which the borrower draws down the credit until the date indicated in CONC 5A.4.3 R.

(2) Where credit is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different
amounts of credit outstanding and the different durations for which the credit is provided.

**Determining the amount of credit provided**

5A.4.6 R

The amount of credit provided under an agreement for high-cost short-term credit for the purposes of CONC 5A.4.2 R (Total cost cap) is the lesser of:

1. the amount of credit that the lender actually advances under the agreement; or
2. the credit limit.

5A.4.7 R

The amount of credit provided under an agreement for high-cost short-term credit for the purposes of CONC 5A.4.3 R (Initial cost cap) is the amount of credit outstanding on the day in question under the agreement, disregarding for the purposes of that rule the effect of the borrower discharging all or part of the borrower's indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of credit before the date provided for in the agreement.

5A.4.8 G

For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of credit repayable under an agreement for high-cost short-term credit (including where that early repayment is financed by a replacement agreement), the amount of credit outstanding on the days that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

5A.4.9 G

For the purposes of this chapter, where a lender allows a borrower to make a number of drawdowns of credit (which may be expressed to be possible up to a specified amount of credit) but only with the lender's consent to each respective drawdown, each drawdown is a separate agreement for high-cost short-term credit and, where applicable, each agreement needs to be documented as a separate regulated credit agreement in accordance with the CCA and with the rest of CONC. This chapter applies to each drawdown as a separate agreement accordingly.

**Refinancing**

5A.4.10 R

A firm must not facilitate an individual becoming a borrower under an agreement for high-cost short-term credit that replaces an earlier agreement for high-cost short-term credit if the replacement agreement provides for the payment by the borrower of one or more charges that, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of credit provided (determined in accordance with CONC 5A.4.6 R) under the combined effect of the replacement agreement and the earlier agreement.

5A.4.11 R

A firm must not facilitate an individual becoming a borrower under an agreement for high-cost short-term credit that replaces an earlier agreement
for high-cost short-term credit if the replacement agreement provides for the payment by the borrower of one or more charges in connection with a breach of the agreement by the borrower that, taken together with such charges provided for by the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.4.12 If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for high-cost short-term credit before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of CONC 5A.4.10 R.

5A.4.13 No amount is to be counted which is provided to the borrower to repay any amount of credit outstanding under an earlier agreement for high-cost short-term credit or any amount provided to pay any charge outstanding under the earlier agreement:

1. in calculating the amount of credit provided for the purposes of CONC 5A.4.10 R; or

2. where an earlier agreement for high-cost short-term credit is replaced, in calculating the amount of credit provided for the purposes of CONC 5A.4.3 R (Initial cost cap).

Default cap

A firm must not facilitate an individual becoming a borrower under an agreement for high-cost short-term credit if:

1. it provides for one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which alone or in combination (and whether in relation to one breach or cumulatively in relation to multiple breaches of the agreement) exceed or are capable of exceeding £15; or

2. it provides for the payment by the borrower of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per day from the date the charge is payable until the date the charge is paid; or

3. it provides for the payment by the borrower of one or more charges (except for a charge to which (1) or (2) applies), on any amount of credit provided which in breach of the agreement has not been repaid, that alone or in combination exceed or are capable of exceeding 0.8% of that amount calculated per day from the date of the breach until the date that the amount has been repaid.

5A.4.15 Firms are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).
Connected agreements

5A.4.16 Where a borrower or a prospective borrower pays a charge:

(1) to a firm, that carries on or has carried on credit broking in relation to an agreement or prospective agreement for high-cost short-term credit, which is in the same group as the firm which is to facilitate, facilitates or has facilitated the provision of credit under the agreement for high-cost short-term credit; or

(2) to a firm, that carries on or has carried on credit broking in relation to an agreement or prospective agreement for high-cost short-term credit, which shares some or all of that charge with the firm which is to facilitate, facilitates or has facilitated the provision of credit under the agreement for high-cost short-term credit;

the reference to a charge in CONC 5A.4.2 R (Total cost cap) and CONC 5A.4.3 R (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

5A.4.17 Where a person imposes, on a borrower or a prospective borrower under an agreement for high-cost short-term credit, a charge for an ancillary service to the agreement, the reference to a charge in CONC 5A.4.2 R (Total cost cap), CONC 5A.4.3 R (Initial cost cap) and CONC 5A.4.14 R (Default cap) includes this charge and, if the charge is not provided for under the agreement for high-cost short-term credit, the agreement providing for the charge is a connected agreement.

5A.4.18 Examples of the types of ancillary service to an agreement for high-cost short-term credit referred to in CONC 5A.4.17 R include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement.

Prohibition on compound interest

5A.4.19 A firm must not facilitate an individual becoming a borrower under an agreement for high-cost short-term credit which provides for a charge by way of interest, unless the charge is by way of simple interest.
5A.5 Consequences of contravention of the cost caps

Application

This section applies to:

1. a firm with respect to consumer credit lending;
2. a firm with respect to debt administration;
3. a firm with respect to debt collecting; or
4. a firm with respect to operating an electronic system in relation to lending.

Contravention of cost caps and unenforceability of agreements and obligations

Where:

1. a firm enters into an agreement for high-cost short-term credit in contravention of a rule in CONC 5A.2; or
2. a firm facilitates an individual becoming a borrower under an agreement for high-cost short-term credit in contravention of a rule in CONC 5A.4; or
3. a firm within CONC 5A.5.1 R (1) imposes a charge in contravention of a rule in CONC 5A.3; or
4. a firm within CONC 5A.5.1 R (4) imposes a charge on behalf of a lender in contravention of a rule in CONC 5A.3; or
5. a firm within CONC 5A.5.1 R (2) or CONC 5A.5.1 R (3) on behalf of a firm within CONC 5A.5.1 R (1) or CONC 5A.5.1 R (4) imposes a charge in contravention of a rule in CONC 5A.3:
   a. the agreement is unenforceable against the borrower; and
   b. the borrower may choose not to perform the agreement and if that is the case:
      i. at the written or oral request of the borrower, the lender must, as soon as reasonably practicable following the request and in any case within 7 days of the request, repay to the borrower any charges paid by the borrower under the
agreement or confirm by notice in writing to the borrower that there are no charges to pay;

(ii) where the lender complies with (i), the borrower must repay any credit received by the borrower under the agreement to the lender within a reasonable period from the day on which the charges in (i) are received by the borrower or the day on which the notice of confirmation in (i) is received; and

(iii) in any case, the lender must not demand payment of the sum in (ii) in less than 30 days from the day in (ii).

Where an agreement for high-cost short-term credit provides for or imposes one or more charges that alone or in combination exceed or are capable of exceeding an amount set out in CONC 5A.2 or CONC 5A.3:

(1) the agreement is unenforceable against the borrower to the extent that such a charge or such charges exceed or are capable of exceeding that amount; and

(2) the borrower may choose not to perform the agreement to that extent and if that is the case at the written or oral request of the borrower, the lender must, as soon as reasonably practicable following the request and in any case within 7 days of the request, repay to the borrower any charges to the extent in (1) paid by the borrower under the agreement or confirm by notice in writing to the borrower that there are no charges to that extent to pay.

Once the lender has repaid the charges to the borrower or has confirmed there are no charges to repay the borrower is then under a statutory obligation to repay any credit received under the agreement.

What is a reasonable period for the borrower to repay the credit depends on the circumstances of the case, including the terms for repayment under the agreement. Where the agreement provided for repayment in instalments, the firm should consider issuing the borrower with a schedule for repayment under which the firm would collect the credit in instalments at the same periodic intervals as under the agreement.

Firms are reminded that Principle 6 applies to how they deal with borrowers in relation to repayment of the credit required by CONC 5A.5.2 R. The FCA would expect firms to take into account the financial situation of the borrower in considering what is a reasonable period for repayment.

CONC 5A.5.3 R is a residual provision that applies to a firm established in the UK which carries on debt administration or debt collection, but where the rules in CONC 5A do not apply to a lender because the lender is established outside the UK and provides electronic commerce activities into the UK. Where a borrower gives notice to the lender referred to in CONC 5A.5.3 R, only charges which exceed the amounts set out in CONC 5A.2 or CONC 5A.3 are void. The borrower remains under a contractual obligation to repay the credit received under the agreement and any charges under the agreement permitted by those provisions.
5A.6 Interpretation

In this chapter:

(1) “ancillary service” is a service in connection with the provision of credit under the agreement for high-cost short-term credit and includes, but not limited to, an insurance or payment protection policy;

(2) “borrower” is an individual and includes:
   (a) any person providing a guarantee or indemnity under the regulated credit agreement; and
   (b) a person to whom the rights and duties of the borrower under the regulated credit agreement or of a person falling within (a) have passed by assignment or operation of law;

(3) "charge" is a charge payable, by way of interest or otherwise, in connection with the provision of credit under the regulated credit agreement, whether or not the agreement itself makes provision for it and whether or not the person to whom it is payable is a party to the regulated credit agreement or an authorised person;

(4) “connected agreement” is an agreement which provides for a charge within CONC 5A.2.16 R, CONC 5A.2.17 R, CONC 5A.3.20 R, CONC 5A.3.21 R, CONC 5A.4.16 R and CONC 5A.4.17 R;

(5) "impose one or more charges on a borrower under an agreement for high-cost short-term credit” includes taking the following actions under the agreement:
   (a) taking steps to perform duties, or exercise or enforce rights, on behalf of a lender in relation to a charge; or in relation to a firm with respect to operating an electronic system in relation to lending, exercise or enforce rights, on behalf of a lender in relation to one or more charges;
   (b) taking steps to procure the payment of a debt due in relation to one or more charges;
   (c) undertaking to receive payments in respect of interest due under an agreement for high-cost short-term credit and make payments in respect of interest due under the agreement to the lender;
   (d) arranging for or instructing another person to take any of the steps described in (a), (b) or (c); or
   (e) exercising the rights of the lender in a way that enables the imposition on the borrower of one or more charges.
The meaning of the expression “impose one or more charges on a borrower under an agreement for high-cost short-term credit” is set out in CONC 5A.6.1 R (5). The meaning of “impose” in relation to a charge in this chapter is broad and includes, but is not limited to, situations including where a firm:

1. enters into an agreement containing a clause obliging the borrower to pay a charge;
2. varies or supplements an agreement and this has the result that there is:
   a. an increase in the amount of a charge; or
   b. where the amount of a charge is determined by reference to a period of time, an increase in the period of time to which a charge applies;
3. adds a charge to a borrower's account;
4. communicates with a borrower demanding payment of a charge or indicating that the borrower is, will be or may be obliged to pay the charge; and
5. is operating an electronic system in relation to lending, and it does any of activities in (1) to (4) for a lender.
Chapter 5B

Cost cap for rent-to-own agreements
5B.1 Application and guidance

Application

5B.1.1 This chapter applies:

(1) to a RTO firm with respect to any RTO agreement that has been entered into on or after one of the following dates:

(a) for a RTO agreement that relates to goods that have not been offered or made available to consumers by the RTO firm immediately before 1 April 2019, that date; or

(b) for a RTO agreement that relates to any other goods, the earliest of the following dates:

(i) any date on or after 1 April 2019 on which the RTO firm has increased the cash price of the goods to which the agreement relates; or

(ii) 1 July 2019.

(2) to a RTO firm with respect to an arrangement to vary or supplement an existing RTO agreement so as to supply one or more additional or different goods under that agreement, that has been entered into on or after one of the following dates:

(a) for an arrangement that relates to additional or different goods that have not been offered or made available to consumers by the RTO firm immediately before 1 April 2019, that date; or

(b) for an arrangement that relates to any other additional or different goods, the earliest of the following dates:

any date on or after 1 April 2019 on which the RTO firm has increased the cash price of the additional or different goods; or

1 July 2019.

(3) Where an RTO firm is a micro-enterprise the references in CONC 5B.1.1R(1)(b)(ii) and CONC 5B.1.1R(2)(b)(ii) to 1 July 2019 are to be read instead as references to 1 October 2019, and all other references to those provisions are to be read accordingly.

5B.2 This chapter applies to RTO firms when they are entering into new RTO agreements, and when they are varying or supplementing an existing RTO agreements so as to supply additional or different goods under the agreement. This chapter does not therefore apply where
the variation or supplementation of an existing RTO agreement does not involve the supply of additional or different goods.

(2) Where CONC 5B.1.1R(2) applies, this chapter does not apply in relation to goods that had been supplied under an existing RTO agreement prior to the relevant date as provided in CONC 5B.1.1R(2)(a) and (b).

5B.1.3 RTO firms are reminded that, as set out in GEN 2.2.1R, the provisions of this chapter have to be interpreted in light of their purpose.

5B.1.4 In this chapter, a word or term in bold (other than in headings and titles) has the meaning given in CONC 5B.7.
5B.2 Prohibition on RTO firms from entering into RTO agreements

Entering into, varying or supplementing agreements: requirements as to the cash price of new goods

5B.2.1 A RTO firm must not enter into, vary or supplement a RTO agreement where the cash price of the goods (which are not second-hand goods) supplied under the agreement exceeds the benchmarked price.

5B.2.2 Except where CONC 5B.2.4R(1) applies, a RTO firm must establish the benchmarked price by taking the following steps:

1. The RTO firm must find three benchmarking cash prices.

2. A benchmarking cash price:
   
   (a) must be a cash price at which the goods are currently offered or available for sale to consumers in the United Kingdom, but not by another RTO firm or an associate of the RTO firm establishing the benchmarked price;

   (b) save where paragraph (3) applies, must be for the same goods as the RTO firm intends to supply under the RTO agreement;

   (c) where paragraph (3) applies, must be for goods comparable, by reference to any features or characteristics of the goods that might reasonably be expected to affect the cash price, to those which the RTO firm intends to supply under the RTO agreement; and

   (d) may be a cash price charged by a retail revolving credit business provided the other two benchmarking cash prices are not.

3. This paragraph applies where, following a reasonable search of the market, the RTO firm has been unable to find three benchmarking cash prices that satisfy the requirements in paragraph (2)(b).

4. Where paragraph (2)(d) applies, the median of the three benchmarking cash prices is the benchmarked price.

5. Where paragraph (2)(d) does not apply, the highest of the three benchmarking cash prices is the benchmarked price.

6. Each item of goods being supplied under one RTO agreement must be benchmarked individually except where the RTO firm is offering a bundle of goods to be supplied for one cash price.
(7) Except where paragraph (8) applies, where a bundle of goods is being supplied under one RTO agreement for one cash price, the RTO firm must benchmark against other goods supplied as bundles, in the way described in paragraphs (1) and (2) above.

(8) This paragraph applies where:

(a) a RTO firm wishes to supply a bundle of goods under one RTO agreement for one cash price;

(b) the RTO firm has been unable to find three benchmarking cash prices based on the same bundle of goods; and

(c) any comparable bundle of goods that the RTO firm would need to rely upon to establish a benchmarked price contains one or more goods of significantly different value from those in the bundle that the RTO firm wishes to supply.

(9) Where paragraph (8) applies the RTO firm must:

(a) separately benchmark each item in accordance with paragraphs (1) and (2) above; and

(b) set separate cash prices for each of those items.

(10) Where a RTO firm reasonably considers that a particular cash price is so far outside the range of cash prices it has found that no reasonably-informed UK consumer is likely to pay that cash price, the RTO firm must not use that cash price as a benchmarking price.

(11) In assessing whether a particular cash price is so far outside the range of cash prices it has found that no reasonably-informed UK consumer is likely to pay that cash price a RTO firm must, in particular, consider:

(a) the difference between that cash price and the other two benchmarking cash prices the RTO firm has found;

(b) evidence suggesting that the cash price is out of date, for example where the item is no longer in stock; and

(c) any other factors suggesting that the seller does not expect to sell the goods at that cash price.

1) New goods are goods which are not second-hand goods and include, for example, ex-display goods.

2) The range of features which RTO firms might consider under CONC 5B.2.2R(2)(c) when identifying comparable goods includes brand, quality, functionality, performance, size and colour, but only where these features could reasonably be expected to affect the cash price.

3) In relation to CONC 5B.2.2R(10), examples of cases where the FCA would expect a RTO firm to exclude a cash price include, but are not limited to:

(a) cash prices that have been set primarily for a non-UK market; and

(b) cash prices that have clearly been set in error.
Establishing a benchmarked price for goods that will be new to the UK market

1. This paragraph applies to goods:
   - that will not be sold exclusively by a RTO firm;
   - that are not currently offered for sale on the UK market; and
   - that have features so technologically different from those of goods currently for sale on the UK market that it is not possible to identify goods that are genuinely comparable.

2. Where paragraph (1) applies, a RTO firm must establish a benchmarked price for the goods that is reasonable, having regard in particular to:
   - any price at which the goods have been advertised in the United Kingdom prior to launch;
   - any recommended retail price for the goods;
   - any other recommended price for the goods that has been provided by a supplier;
   - where the goods replace an existing model:
     - the cash price at which the existing model was first offered for sale in the United Kingdom; and
     - where the existing model replaced a previous model, the difference between the cash price of the previous model and the cash price of the existing model at the time the existing model was first offered for sale.

Timing

A RTO firm must establish the benchmarked price for goods:

1. by the time it offers to supply the goods under a RTO agreement for the first time;
2. by the time it increases the cash price at which it offers to supply the goods under a RTO agreement;
3. where a benchmarked price has been established under \( 5B.2.4 \), by the end of the period of 3 months that begins on the day on which the goods were first offered for sale on the UK market; and
4. no later than 12 months after the last time it established a benchmarked price in accordance with any provision of this rule.

The fact that a benchmarked price for goods has been established before the coming into force of \( 5B \) does not prevent it satisfying the requirements of \( 5B.2.5 \). Subsequent benchmarking then has to be carried out in accordance with \( 5B.2.5(2), (3) \) or \( (4) \) in the normal way.
Entering into, varying or supplementing agreements: requirements as to the cash price of delivery and installation of goods

5B.2.7 R A RTO firm must not enter into:

(1) a RTO agreement;

(2) an arrangement to vary or supplement an existing RTO agreement by the supply of additional or different goods under that agreement; or

(3) a connected agreement,

where the cash price for delivery and/or the cash price for installation exceeds the relevant benchmarked price.

5B.2.8 R

(1) A RTO firm must establish the benchmarked price for delivery or installation of goods supplied under a RTO agreement by selecting the cash prices charged for, as relevant, delivery or installation of the same category of goods by three retailers (who must not include a RTO firm or an associate of the RTO firm establishing the benchmarked price) and taking the median of those prices.

(2) A RTO firm must establish the benchmarked price for delivery and/or installation:

(a) by the time it offers to supply the relevant goods under a RTO agreement for the first time;

(b) by the time it increases the cash price at which it offers to provide delivery or installation in relation to goods supplied under a RTO agreement; and

(c) no later than 12 months after the last time it established a benchmarked price in accordance with any provision of this rule.

5B.2.9 G The fact that a benchmarked price for delivery and/or installation has been established before the coming into force of CONC 5B does not prevent it satisfying the requirements of CONC 5B.2.8R(2)(a).

5B.2.10 G

(1) The FCA does not expect RTO firms to identify the cash prices for delivery and/or installation of identical goods. It will be sufficient for RTO firms to select cash prices for the delivery and/or installation of the category of goods. For example, RTO firms would need to find cash prices for the delivery and/or installation of washing machines but not for a particular model of washing machine.

(2) When selecting benchmarking cash prices for delivery, RTO firms should select prices which apply in comparable circumstances to those that apply to the RTO firm, for example in terms of distance or timing.
Entering into, varying or supplementing agreements: total cost of credit cap

5B.2.11

(1) A RTO firm must not enter into a RTO agreement for goods that provides for the payment by the borrower of one or more charges that, alone or in combination with any other charge under the RTO agreement or a connected agreement, exceed or are capable of exceeding the cash price of the goods plus, where relevant:

(a) the cash price for delivery;

(b) the cash price for installation; and

(c) the cash price of goods or services supplied under a connected agreement.

(2) A RTO firm must not enter into an arrangement to vary or supplement a RTO agreement by the supply of additional or different goods, where the arrangement provides for the payment by the borrower, in relation to the additional or different goods, of one or more charges that, alone or in combination with any other charge under the RTO agreement or a connected agreement, exceed or are capable of exceeding the cash price of the additional or different goods supplied, plus, where relevant:

(a) the cash price for delivery;

(b) the cash price for installation; and

(c) the cash price of goods or services supplied by a connected agreement.

5B.2.12

Where more than one item of goods and/or services is supplied under one RTO agreement, the total amount of the charges that may be payable by the borrower under that agreement should be calculated with reference to the sum of the cash price of each of the goods and, where relevant, services. For example, where a RTO agreement covers the supply of a washing machine and dryer, and delivery and installation of both:

- Washing machine: cash price = £200
- Dryer: cash price = £250
- Delivery: cash price total = £30
- Installation: cash price total = £20
- The sum of the cash prices = £500

The total amount of charges that may, in addition, be payable by the borrower must not exceed £500.
5B.3 Anti-avoidance

5B.3.1 RTO firms must not attempt to recover revenue that may be lost due to compliance with the total cost of credit cap rules through the price for other goods or services provided by the RTO firm in connection with a RTO agreement.

5B.3.2 (1) For example, RTO firms should not seek to increase the price of theft or accidental damage insurance, or extended warranties in order to recover revenue lost due to the cost cap rules.

(2) RTO firms are also reminded of the rule in CONC 7.7.5R which states that firms must not impose charges on customers in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs to the firm.
5B.4 Policies and procedures for establishing benchmarked prices

5B.4.1 A RTO firm must:

(1) establish, implement and maintain clear and effective policies and procedures to enable it to establish **benchmarked** prices under  
■ CONC 5B.2.2R, ■ CONC 5B.2.4R and ■ CONC 5B.2.8R;

(2) set out the policies and procedures in (1) in writing, and have them approved by its *governing body or senior personnel*;

(3) assess and periodically review:

(a) the effectiveness of the policies and procedures in (1); and

(b) the RTO firm’s compliance with those policies and procedures and with its obligations under ■ CONC 5B; and

(4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the RTO firm’s compliance with its obligations.

Obligations in competition law

RTO firms are reminded of their obligations to ensure compliance with competition law (including the prohibitions against anti-competitive agreements and abuse of a dominant position in Chapters 1 and 2 of the Competition Act 1998 and the criminal cartel offence in Section 188 of the Enterprise Act 2002 as amended by the Enterprise and Regulatory Reform Act 2013). Those obligations include:

(1) not entering into any agreements with other firms where the agreement has as its object or effect an appreciable prevention, restriction or distortion of competition – for example to agree sale prices or to allocate customers. For example, if a RTO firm director called another RTO firm or a non-RTO firm and agreed to sell their products at a certain price, this would be restrictive of competition and illegal. The individuals involved could also be prosecuted for the criminal cartel offence; and

(2) not disclosing to, or accepting from, competitors any commercially sensitive information such as pricing or price planning, customer or market information or company strategy. For example, if a RTO firm’s employee met or called another RTO firm’s employee to find out any current or future pricing information whatsoever, that was not otherwise publicly available, whether for the purpose of attempting
to fulfil any obligation under these rules or not, that could be illegal anti-competitive activity, even if the recipient of the information stayed silent.

RTO firms should also note the following points.

(1) The disclosure or receipt of commercially sensitive information may amount to a breach of competition law and could lead to infringement findings and fines not only in relation to the firm disclosing the information but also in relation to other firms receiving the information.

(2) A person commits the criminal cartel offence if they agree with one or more others to make or implement (or cause to be made or implemented) certain prohibited cartel arrangements relating to two or more businesses, namely price fixing, market sharing, bid-rigging, and limiting output. The maximum penalty on conviction for the criminal cartel offence is five years imprisonment and/or an unlimited fine.

(3) It is the responsibility of each firm to assess its own position under competition law (for example by taking its own legal advice) and to ensure all its staff are compliant with competition law and in particular that they know what is, and is not, lawful practice.

(4) Relevant guidance on competition law has been published by the Competition and Markets Authority.

[Note: for example, see:


5B.5 Record keeping

RTO firms are reminded of their obligations in SYSC 9.1.1R to keep orderly records, which must be sufficient to enable the FCA to monitor the firm’s compliance with the requirements of the regulatory system. Records which the FCA would consider to be sufficient to show compliance with the benchmarking requirements in CONC 5B include:

1. point-in-time evidence of other benchmarking cash prices such as screengrabs or outputs of third party benchmarking data, together with evidence establishing the point in time to which it relates;

2. evidence to show how the RTO firm took reasonable steps to ascertain whether the same item of goods or bundle of goods was available for sale by other retailers; and

3. evidence to show how the RTO firm established that goods benchmarked against were comparable to those supplied by the RTO firm.
5B.6 Consequences of contravention of the total cost of credit cap

5B.6.1 Where a RTO firm enters into a RTO agreement in contravention of a rule in CONC 5B.2.11R:

an obligation in or under a RTO agreement that requires the borrower to pay charges which in total would exceed the total cost of credit cap, is unenforceable in its entirety; and

the borrower is entitled to recover any amount paid in charges. If that is the case, at the written or oral request of the borrower, the RTO firm must, as soon as reasonably practicable following the request and in any case within 7 days of the request, repay to the borrower any charges paid by the borrower under or in connection with the RTO agreement.

5B.6.2 Taking the example in CONC 5B.2.12G, if the agreement provided that the total amount of charges that may be payable by the borrower were £600 (so exceeding the sum of the cash prices which was £500), the obligation to pay the £600 charges would be unenforceable, and where a customer had paid part or all of the £600, they would be entitled to have the amount of charges they had paid refunded by the RTO firm.
In this chapter, words or terms used in CONC 5B which appear in bold (other than headings and titles) have the following meanings:

(1) “associate” means any person whose business or domestic relationship with a RTO firm, whether directly or indirectly, might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with consumers;

(2) “benchmarked price” means a price calculated in accordance with CONC 5B.2.2R, CONC 5B.2.4R or CONC 5B.2.8R;

(3) “charge” is a charge payable, by way of interest or otherwise, in connection with the provision of credit under a RTO agreement, whether or not the agreement itself makes provision for this, and whether or not the person to whom it is payable is a party to the RTO agreement or an authorised person, and which would form part of the total charge for credit;

(4) “connected agreement” is an agreement:
   (a) for delivery and/or installation of goods supplied under a RTO agreement; and/or
   (b) which provides for a payment in connection with a RTO agreement where that payment would form part of the total charge for credit;

(5) “household goods” means goods which are normally found in a residential home and includes but is not limited to furniture, kitchen appliances (such as cookers, washing machines and dryers, microwaves, refrigerators and freezers), electronic and technological goods (such as vacuum cleaners, televisions and accessories, music systems and accessories, games consoles and accessories, computers, tablets and accessories, and mobile phones);

(6) “retail revolving credit business” means a person:
   (a) whose business comprises or includes the sale of goods financed by a form of retail revolving credit; and
   (b) whose business does not comprise or include the sale of such goods from one or more physical stores.

(7) “RTO agreement” means a regulated credit agreement which is a hire-purchase or conditional sale agreement that supplies one or
more items of **household goods**, but excluding those in relation to goods acquired principally for business purposes; and

(8) "**RTO firm**" means a **firm** whose business comprises or includes the regulated activity of entering into a regulated credit agreement as lender and/or exercising or having the right to exercise the lender’s rights and duties under a regulated credit agreement, in relation to one or more **RTO agreements**, as defined in CONC 5B.7.1R(7) and in relation to more than one category of **household goods**.
6.1 Application

6.1.1 R
This chapter applies, unless otherwise stated in a rule, or in relation to a rule, to a firm with respect to consumer credit lending.

6.1.2 G
(1) R CONC 6.5 and R CONC 6.7 apply to firms with respect to consumer credit lending.

(2) R CONC 6.3 applies to current account agreements that would be regulated credit agreements if the customer overdraws on the account.

(3) R CONC 6.4 and R CONC 6.6 apply to firms which carry on consumer credit lending in relation to regulated credit agreements and firms which carry on consumer hiring in relation to regulated consumer hire agreements.

(4) R CONC 6.7.17 R to R CONC 6.7.26 R also apply to firms with respect to operating an electronic system in relation to lending in relation to a borrower in relation to a P2P agreement.

(5) R CONC 6.8 applies to credit broking.
6.2 Assessment of creditworthiness: during agreement [deleted]
6.3 Information to be provided on a current account agreement and on significant overdrawing

Application

6.3.1 This section applies:

(1) to a firm with respect to consumer credit lending; and

(2) where a firm has entered into a current account agreement where:
   (a) there is a possibility that the account-holder may be allowed to overdraft on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and
   (b) if the account-holder did so, this would be a regulated credit agreement.

6.3.2 \(\text{CONC 6.3.3 R does not apply where the overdraft or excess would be secured on land.}\)

Current account information

6.3.3 A firm must provide to the account-holder, in writing, the information in \(\text{CONC 4.7.2R (2)}\) at least annually.

[Note: section 74A of CCA (partial implementation of article 18 of the Consumer Credit Directive)]

Information to be provided on significant overdrawing without prior arrangement

6.3.4 (1) A firm must inform the account-holder in writing of the matters in (2) without delay where:
   (a) the account-holder overdrafts on the current account without a pre-arranged overdraft, or exceeds a pre-arranged overdraft limit, for a period exceeding one month;
   (b) the amount of that overdraft or excess is significant throughout that period;
   (c) the overdraft or excess is a regulated credit agreement; and
   (d) the account-holder has not been informed in writing of the matters in (2) within that period.
(2) The matters in (1) are:
   (a) the fact that the account is overdrawn or the overdraft limit has been exceeded;
   (b) the amount of that overdraft or excess;
   (c) the rate of interest charged on it; and
   (d) any other charges payable by the customer in relation to it (including any penalties and any interest on those charges).

(3) For the purposes of (1)(b) the amount of the overdraft or excess is significant if:
   (a) the account-holder is liable to pay a charge for which he would not otherwise be liable; or
   (b) the overdraft or excess is likely to have an adverse effect on the customer’s ability to receive further credit (including any effect on the information about the customer held by a credit reference agency); or
   (c) it otherwise appears significant, having regard to all the circumstances.

(4) Where the overdraft or excess is secured on land, (1)(a) is to be read as if the reference to one month were a reference to three months.

[Note: section 74B of CCA]
[Note: article 18 of the Consumer Credit Directive]
6.4 Appropriation of payments

Application

6.4.1 This section applies to

(1) a firm with respect to consumer credit lending;

(2) a firm with respect to consumer hiring.

Appropriation

6.4.2 Where a firm is entitled to payments from the same customer in respect of two or more regulated agreements, the firm must allow the customer, on making any payment in respect of those agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum paid by him:

(a) in or towards the satisfaction of the sum due under any one of the agreements; or

(b) in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as the customer thinks fit.

[Note: section 81(1) of CCA]

(2) If the customer fails to make any such appropriation where one or more of the agreements is:

(a) a hire-purchase agreement or conditional sale agreement; or

(b) a consumer hire agreement; or

(c) an agreement in relation to which any security is provided;

the firm must appropriate the payment towards satisfaction of the sums due under the agreements in the proportions which those sums bear to one another.

[Note: section 81(2) of CCA]
6.5 Assignment of rights

Application

This section applies to a firm with respect to consumer credit lending.

Notice of assignment

(1) Where rights of a lender under a regulated credit agreement are assigned to a firm, that firm must arrange for notice of the assignment to be given to the customer:

(a) as soon as reasonably possible; or

(b) if, after the assignment, the arrangements for servicing the credit under the agreement do not change as far as the customer is concerned, on or before the first occasion they do.

[Note: section 82A of CCA]

(2) Paragraph (1) does not apply to an agreement secured on land.

(3) A firm may assign the rights of a lender under a regulated credit agreement to a third party only if:

(a) the third party is a firm; or

(b) where the third party does not require authorisation, the firm has an agreement with the third party which requires the third party to arrange for a notice of assignment in accordance with (1).

[Note: article 17 of the Consumer Credit Directive]
6.6 Pawn broking: conduct of business

Application

This section applies to:

(1) a firm with respect to consumer credit lending;

(2) a firm with respect to consumer hiring.

Failure to supply copies of pledge agreement etc

Sections 62 to 64 and 114(1) of the CCA continue to apply to a regulated agreement under which a person takes any article in pawn. A firm which fails to observe its obligations under those provisions may be subject to disciplinary action by the FCA.

[Note: section 115 of CCA]

Pawn records: relating to articles under a regulated credit agreement

A firm which takes any article in pawn under a regulated credit agreement must keep such books or other records as are sufficient to show and explain readily at any time all dealings with the article, including:

(1) the taking of the article in pawn;

(2) any redemption of the article; and

(3) where the article has become realisable by the firm, any sale of the article under section 121(1) of the CCA.

[Note: regulation 2(1) of SI 1983/1565]

Without prejudice to the generality of CONC 6.6.3 R, the entries in the books or other records in respect of the dealings mentioned in CONC 6.6.3 R (1) to CONC 6.6.3 R (3) must contain the information in CONC 6.6.7 R to CONC 6.6.9 R.

[Note: regulation 2(2) of SI 1983/1565]
CONC 6 : Post contractual requirements

Section 6.6 : Pawn broking: conduct of business

6.6.5

Where the entries in relation to any article taken in pawn are not shown together as a whole but are shown in separate places, then in each place where entries are made the record must show:

(1) the date and the number or other reference of the agreement under which the article was taken in pawn and, where separate from any document embodying the agreement, the number or other reference of the pawn-receipt;

(2) the date on which the article was taken in pawn; and

(3) the name of the customer.

[Note: regulation 2(3) of SI 1983/1565]

6.6.6

A firm must retain the books or other records required by CONC 6.6.3 at least until the expiration of whichever is the longer of the following periods:

(1) five years from the date on which the article was taken in pawn; or

(2) where an article has become realisable by the firm, three years from the date of sale under section 121(1) of the CCA or the redemption of the article, as the case may be.

[Note: regulation 2(4) of SI 1983/1565]

Information to be kept by a person who takes any article in pawn

6.6.7

The entries in the books or other records, in relation to the taking of the article in pawn, must contain the following information:

(1) the date and the number or other reference of the agreement under which the article was taken in pawn, and of the pawn-receipt if separate, sufficient to identify it or them;

(2) the date on which the article was taken in pawn;

(3) the name and a postal address and, where appropriate, other address of the customer;

(4) the description that appears in the pawn-receipt of the article taken in pawn;

(5) the amount of the credit secured by the pledge;

(6) the date of the end of the redemption period; and

(7) the rate of interest, and the amount or rate of any other charges for credit, as provided for in the agreement under which the article was take in pawn.

[Note: paragraph 1 of Schedule to SI 1983/1565]
The entries in the books or other records in relation to any redemption of the article must contain the date of the redemption.

[Note: paragraph 2 of Schedule to SI 1983/1565]

The entries in the books or other records, where the article has become realisable by the firm, in relation to any sale of the article under section 121(1) of the CCA, must contain the following information:

1. the date of the sale;
2. where the article was sold by auction, the name and a postal address of the auctioneer;
3. where the article was not sold by auction, the postal address of the premises at which the sale took place;
4. the gross amount realised;
5. the itemised expenses, if any, of the sale;
6. where (5) applies, the net proceeds of sale, being the difference between the gross amount in (4) and the total amount of the expenses in (5);
7. the amount which would have been payable under the agreement under which the article was taken in pawn if the article had been redeemed on the date of the sale;
8. where the net proceeds of sale are not less than the sum which, if the article taken in pawn had been redeemed on the date of the sale, would have been payable for its redemption, the amount of any surplus payable to the customer;
9. where (8) does not apply, the amount by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the article taken in pawn on the date of the sale, being the amount for which the customer remains liable under section 121(4) of the CCA;
10. the date on which any surplus in (8) was paid to the customer;
11. the date on which any amount in (9) for which the customer remained liable under section 121(4) of the CCA was received from the customer.

[Note: paragraph 3 to Schedule to SI 1983/1565]
6.7  Post contract: business practices

Application

6.7.1  R  
(1) This section applies to a firm with respect to consumer credit lending.

(2) ■ CONC 6.7.17 R to ■ CONC 6.7.26 R also apply to a firm with respect to operating an electronic system in relation to lending in relation to a borrower under a P2P agreement and references in those provisions to a firm refinancing an agreement refer to any action taken by an operator of an electronic system in relation to lending which has the result that a P2P agreement is refinanced.

(3) ■ CONC 6.7.3AR to ■ CONC 6.7.3DG and ■ CONC 6.7.27R to ■ CONC 6.7.40G do not apply in relation to a credit card of a type that the firm promotes to customers solely for the purposes in each case of the customer's business (a "business credit card").

(4) ■ CONC 6.7.2R to ■ CONC 6.7.3G do not apply to retail revolving credit.

Business practices

6.7.2  R  
(1) A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

(2) This rule does not apply in relation to a credit card unless the card is a business credit card (see ■ CONC 6.7.1R(3)).

[Note: paragraph 6.2 of ILG]

6.7.3  G  
The action referred to in ■ CONC 6.7.2 R should generally include:

(1) notifying the customer of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and

[Note: paragraph 6.16 of ILG]

(2) providing contact details for not-for-profit debt advice bodies.

[Note: paragraph 6.2 (box) of ILG]
**Business practices: credit cards and retail revolving credit**

**6.7.3A** A *firm* must monitor a *retail revolving credit customer’s* or a *credit card customer’s* repayment record and any other relevant information held by the *firm* and take appropriate action where there are signs of actual or possible financial difficulties.

**6.7.3B**

(1) Circumstances in which there are signs of actual or possible financial difficulties include where there is a significant risk of one or more of the matters set out in ■ CONC 1.3.1G(1) to (7) (Guidance on financial difficulties) occurring in relation to the *retail revolving credit customer* or *credit card customer*.

(2) Examples of appropriate action as referred to in ■ CONC 6.7.3AR would include the *firm* doing one or more of the following, as may be relevant in the circumstances:

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

(b) 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);

(c) notifying the *customer* of the risk of escalating debt, additional interest, fees or charges and of potential financial difficulties; and

(d) providing contact details for *not-for-profit debt advice bodies* and encouraging the *customer* to contact one of them.

(3) A *customer* paying the minimum amount required under the agreement is not, by itself, a sign of possible or actual financial difficulties under ■ CONC 6.7.3AR. It may, however, be such a sign where, for example, a *customer* with a pattern of paying more than the minimum required payment reduces the payments to the minimum required payment due, but their pattern of drawing down *credit* on the card does not materially change.

(4) In determining what is “appropriate action” under ■ CONC 6.7.3AR, a *firm* should take into account any steps it has taken under ■ CONC 6.7.30R, ■ CONC 6.7.31R or ■ CONC 6.7.37R.

**6.7.3C** A *firm* must establish, implement and maintain an adequate policy for identifying and dealing with *customers* showing signs of actual or possible financial difficulties, even though they may have not missed a payment.

**6.7.3D** The policy referred to in ■ CONC 6.7.3CR is in addition to the policy required under ■ CONC 7.2.1R.
### Credit card and retail revolving credit requirements

**6.7.4** A firm must first allocate a *repayment* to the debt subject to the highest rate of interest (and then to the next highest rate of interest and so on) for:

1. the outstanding balance on a credit card; or
2. the outstanding balance on a store card; or
3. a credit card or a store card, in relation to which there is a *fixed-sum credit* element, to repayments beyond those required to satisfy the fixed instalments.

[Note: paragraph 6.3 of ILG]

**6.7.5**

1. A firm must set the minimum required *repayment* under a *regulated credit agreement* for a credit card or a store card at an amount equal to at least that amount which repays the interest, fees and charges that have been applied to the *customer’s* account, plus one percentage of the amount outstanding.

[Note: paragraph 6.4 of ILG]

2. Where (1) applies and a firm applies interest to a period of more than one *month*, for the purpose of calculating the amount of the interest part of the minimum required repayment the firm may disregard any interest applied in respect of a period prior to the period of the statement in question.

[Note: paragraph 6.4 (box) of ILG]

3. Paragraph (1) applies to agreements made on or after 1 April 2011.

**6.7.6** A firm under a *regulated credit agreement* for a credit card or a store card must provide a *customer* with the option to pay any amount they choose (equal to or more than the minimum required repayment but less than the full outstanding balance) on a regular basis, when making automated repayments.

[Note: paragraph 6.5 of ILG]

**6.7.7** A firm must not increase, nor offer to increase, a *customer’s credit limit* on a credit card or *retail revolving credit* agreement where:

1. the firm has been advised that the customer does not wish to have any *credit limit* increases; or
2. a customer is at risk of financial difficulties.

[Note: paragraphs 6.6 and 6.7 of ILG]

**6.7.8** A firm under a *retail revolving credit* agreement, or a *regulated credit agreement* for a credit card, must:
(1) permit a customer at any time to reduce or decline offers to increase the credit limit; and

(2) permit a customer to decline to receive offers of credit limit increases.

[Note: paragraphs 6.8 and 6.9 of ILG]

6.7.9 R

(1) This rule applies to a regulated credit agreement for a credit card and to a retail revolving credit agreement.

(2) A firm must notify the customer of a proposed increase in the credit limit under the agreement:

(a) in the case of a regulated credit agreement for a credit card or a store card, at least 30 days before the increase comes into effect; and

(b) in the case of a retail revolving credit agreement (other than an agreement for a store card), at least 28 days before the increase comes into effect,

except in the circumstances described in (3).

(3) The notification in (2) is not required where:

(a) the increase is at the express request of the customer; or

(b) the increase is proposed by the firm, but the customer agrees to it at that time and wishes it to come into effect in less than 30 days or 28 days (as the case may be).

[Note: paragraph 6.17 of ILG]

6.7.10 R

Where a customer is at risk of financial difficulties, a firm under a retail revolving credit agreement or a regulated credit agreement for a credit card must, other than where a promotional rate of interest ends, not increase the rate of interest under the agreement.

[Note: paragraph 6.10 of ILG]

6.7.11 G

For the purposes of □ CONC 6.7.7 R and □ CONC 6.7.10 R a customer is at risk of financial difficulties if the customer:

(1) is two or more payments in arrears; or

(2) has agreed a repayment plan with the firm in question; or

(3) is in serious discussion with a firm which carries on debt counselling with a view to entering into a debt management plan and the firm has been notified of this fact.

[Note: paragraph 6.10 (box) of ILG]

6.7.12 R [deleted]
Where a firm proposes to exercise a power under a regulated credit agreement for a credit card or store card to increase the interest rate, the firm must:

(1) permit the customer sixty days, from the date of the firm's notice of the proposed increase during which period the customer may give notice to the firm requiring it to close the account;

(2) permit the customer to pay off the outstanding balance at the rate of interest before the proposed increase and over a reasonable period; and

(3) give notice to the customer of the rights in (1) and (2).

[Note: paragraphs 6.11 and 6.19 of ILG]

Interest rate variations

Where a firm has a right to increase the interest rate under a regulated credit agreement, the firm must not increase the interest rate unless there is a valid reason for doing so.

[Note: paragraph 6.20 of ILG]

Examples of valid reasons for increasing the rate of interest include:

(1) recovering the genuine increased costs of funding the provision of credit under the agreement; and

(2) a change in the risk presented by the customer which justifies the change in the interest rate, which would not generally include missing a single repayment or failing to repay in full on one or two occasions.

[Note: paragraph 6.20 (box) of ILG]

Where a firm increases a rate of interest based on a change in the risk presented by the customer, the firm must:

(1) notify the customer that the rate of interest has been increased based on a change in risk presented by the customer; and

(2) if requested by the customer provide a suitable explanation which may be a generic explanation for such increases.

[Note: paragraph 6.20 (box) of ILG]

(1) This rule applies only to retail revolving credit agreements to which Part 6 of the Payment Services Regulations does not apply.

(2) Where a customer has the benefit of a zero-percentage or low interest, introductory or promotional offer that depends on the customer meeting certain conditions, a firm must provide notice to
the customer reminding them of any action they need to take to meet the conditions of the offer and the date by which this action must be taken, within a reasonable period before that date, taking account of the time at which the information may be most useful to the customer.

This notice must be provided in an appropriate medium (taking into account any preferences expressed by the customer about the medium of communication between the firm and the customer), in plain language and sufficiently prominent, so that it is likely to be seen and understood by the customer.

**Rules on refinancing: general**

6.7.17 R

(1) In CONC 6.7.18 R to CONC 6.7.23 R “refinance” means to extend, or purport to extend, the period over which one or more repayment is to be made by a customer whether by:

(a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement;

(b) exercising a contractual power contained in an existing regulated credit agreement; or

(c) other means, for example, granting an indulgence or waiver to the customer.

(2) “Exercise forbearance” means to refinance a regulated credit agreement where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:

(a) there is no charge in connection with the refinancing; or

(b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.

(3) The term “refinance” within paragraph (1) does not include where under a regulated credit agreement repayable in instalments a customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.

6.7.18 R

A firm must not encourage a customer to refinance a regulated credit agreement if the result would be the customer’s commitments are not sustainable.

[Note: paragraph 4.27 of ILG]

6.7.19 R

A firm must not refinance a customer’s existing credit with the firm (other than by exercising forbearance), unless:

(1) the firm does so at the customer’s request or with the customer’s consent; and
(2) the firm reasonably believes that it is not against the customer’s best interests to do so.

[Note: paragraph 6.24 of ILG]

Rules on refinancing: high-cost short-term credit

Before a firm agrees to refinance high-cost short-term credit, it must:

(1) give or send an information sheet to the customer; and

(2) where reasonably practicable to do so, bring the sheet to the attention of the customer before the refinance;

in the form of the arrears information sheet issued by the FCA referred to in section 86A of the CCA with the following modifications:

(3) for the title and first sentence of the information sheet substitute:

“High-cost short-term loans

Failing to repay on time

Think carefully - rolling over or extending your loan may not be the best option and may make things worse.”; and

(4) for the bullet points substitute:

• **Think carefully before borrowing more.** Borrowing more money is likely to worsen your situation.

• **Work out how much you owe.** To do this, you will need to make a list of all the organisations you owe money to. A debt adviser can help you

• **Put priority debts first.** Some debts are more urgent than others because the consequences of not paying them can be more serious than for other debts, for example, mortgage, rent, council tax/ rates, or gas or electricity arrears. A debt adviser can help you to budget to keep your finances under control

**Discuss options with your lender**

• If you are having trouble paying back on time talk to your lender who can suggest ways to repay and make sure it is affordable for you.

• If you don’t, you may quickly face increased costs from interest or charges. Missed payments could affect your credit rating and make it more difficult to get credit in future.

**Get free help and advice**

• People that access advice resolve their issues more quickly than those that don’t and hundreds of thousands get free debt advice every year.

• Contact one of these organisations for free debt advice.”

(5) in relation to an arrears sheet to be used by an operator of an electronic system in relation to lending:
(a) for the bullet point headed “Work out how much money you owe” substitute:

“Work out how much money you owe. To do this, you will need to make a list of all those you owe money to. A debt adviser can help you.”;

(b) for the title “Discuss options with your lender” substitute

“Discuss options with your peer to peer lending platform (P2P platform)”;

(c) for the bullet point which begins “If you are having trouble?” substitute

“If you are having trouble paying back on time talk to your P2P platform who can suggest ways to repay and make sure it is affordable for you.”.

[Note: Until the end of 30 June 2014, transitional provisions apply to CONC 6.7.20 R: see CONC TP 32]

6.7.21 A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

[Note: paragraph 6.25 of ILG]

6.7.22 A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

[Note: paragraph 6.25 (box) of ILG]

6.7.23 A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions.

[Note: Until the end of 30 June 2014, transitional provisions apply to CONC 6.7.23 R: see CONC TP 3.3]

Continuous payments authority: post agreement obligations

6.7.24 A firm must not amend the terms of a continuous payment authority without first obtaining the customer’s consent, after having fully explained to the customer the reason for the amendment.

[Note: paragraph 3.9miii of DCG]

6.7.25 CONC 6.7.24 R does not preclude the firm from:

(1) making amendments pursuant to a variation clause to which the customer has previously given consent, after it was fully explained to the customer the reason for the amendment; or
(2) reducing or waiving payments unilaterally, for example, under a repayment plan, provided that this is explained to the customer.

[Note: paragraph 3.9miii of DCG]

6.7.25A  R

(1) Paragraph (2) applies if an individual other than the borrower (in this rule referred to as “the guarantor”) has:

(a) provided a guarantee or an indemnity (or both) in relation to:
   (i) a regulated credit agreement; or
   (ii) a P2P agreement in respect of which the borrower is an individual; and

(b) granted a continuous payment authority.

(2) ■ CONC 6.7.24R and ■ CONC 6.7.25R apply in respect of the guarantor as if references to the customer were references to the guarantor.

(3) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

6.7.26  R

A firm must use the correct category code and identifier when presenting a payment request to the payment service provider.

[Note: paragraph 3.9miii of DCG]

Credit cards and retail revolving credit: persistent debt

6.7.27  R

(1) This rule applies to a firm with respect to communicating with a customer about, and receiving payments or exercising rights under, a regulated credit agreement for a credit card or retail revolving credit, if the firm assesses that the amount the customer has paid to the firm towards the credit card balance or retail revolving credit balance over the immediately preceding 18-month period comprises a lower amount in principal than in interest, fees and charges.

(2) A firm must assess whether the condition in paragraph (1) is met at least once a month.

(3) The rule in paragraph (1) does not apply:

   (a) where the balance on the credit card or under the retail revolving credit agreement was below £200 at any point in the 18-month period; or

   (b) where the firm has sent a communication to the customer in accordance with paragraph (4) in the preceding 18 months in relation to the credit card or retail revolving credit facility; or

   (c) where the firm is taking steps to treat the customer with forbearance under ■ CONC 6.7.37R, is otherwise taking equivalent or more favourable steps in relation to the customer's account, or ■ CONC 6.7.39R applies.

(4) Where the rule in paragraph (1) applies in relation to a credit card credit card customer or a retail revolving credit customer, a firm must, in an appropriate medium (taking into account any preferences
expressed by the customer about the medium of communication between the firm and the customer) and in plain language:

(a) notify the customer that, in the preceding 18 months, the amount the customer paid comprised a lower amount in principal than in interest, fees and charges;

(b) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;

(c) encourage the customer to contact the firm to discuss the customer's financial circumstances and whether the customer can increase the amount of payments without an adverse effect on the customer's financial situation;

(d) warn the customer of the potential implications if the customer's payments comprise a lower amount in principal than in interest, fees and charges in two consecutive 18-month periods; and

(e) provide contact details for not-for-profit debt advice bodies and encourage the customer to contact one of them.

6.7.28 For the purposes of CONC 6.7.27R, CONC 6.7.30R, CONC 6.7.34G, CONC 6.7.39R and CONC TP 8, “principal” comprises only the amount of credit drawn down by the customer under the credit card agreement or retail revolving credit agreement, and does not include any interest, fees or charges added to the account.

The potential implications of which the firm should warn the customer under CONC 6.7.27R(4)(d) include the possibility that the account may be suspended, as well as any other steps that the firm might take, and the possible impact on the customer's credit file.

6.7.29 This rule applies in respect of a credit card customer or a retail revolving credit customer to whom a firm is required to have sent a communication under CONC 6.7.27R(4).

The steps required under paragraphs (3) and (4) must be taken:

(a) no earlier than nine months after; and

(b) no later than 10 months after,

the date on which the requirement to send a communication under CONC 6.7.27R arose.

The firm must:
(a) consider the pattern of payments made by the customer over the period beginning on the date on which the requirement to send a communication under CONC 6.7.27R(1) arose and ending on the date the firm takes steps under paragraph (2); and

(b) assume that this will be representative of the customer’s payment pattern in the entire 18-month period immediately following the date on which the requirement to send a communication under CONC 6.7.27R(1) arose.

(4) If the analysis in (3) indicates that it is likely that CONC 6.7.30R will apply with respect to the customer, the firm must repeat the steps required under CONC 6.7.27R(4).

(5) The rule in paragraph (1) does not apply where the firm is already taking steps equivalent to, or more favourable than, those required under CONC 6.7.37R.

6.7.30 R

(1) This rule applies:

(a) in respect of a credit card customer or a retail revolving credit customer to whom a firm is required to have sent a communication under CONC 6.7.27R(1); and

(b) where the amount that the customer has paid to the firm towards the credit card or retail revolving credit balance, over the 18-month period immediately following the date on which the requirement to send a communication under CONC 6.7.27R(1) arose, comprises a lower amount in principal than in interest, fees and charges.

(2) This rule does not apply:

(a) where the balance on the credit card or retail revolving credit was below £200 at any point in the 18-month period;

(b) to any part of the balance on the credit card or retail revolving credit that has previously been subject to the requirements of paragraph (3).

(3) A firm must take reasonable steps to assist a credit card customer who falls under paragraph (1) to repay the balance on their credit card or retail revolving credit as it stands at the end of the period specified in that paragraph more quickly and in a way that does not adversely affect the customer’s financial situation.

(4) The firm is not required to take steps under (3) or CONC 6.7.31R where the firm is already taking steps equivalent to, or more favourable than, those required under CONC 6.7.37R, provided that the firm continues to take those steps.

6.7.31 R

Where a firm is required to assist a customer to repay more quickly under CONC 6.7.30R(3), the firm must contact the customer to:

(1) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;
(2) provide contact details for not-for-profit debt advice bodies and encourage the customer to contact one of them;

(3) set out options for the customer to increase payments and request that the customer, within a specified reasonable period, respond to either:
   (a) confirm that the customer will increase payments in accordance with one of the options; or
   (b) where applicable, confirm that the options proposed are not sustainable for the customer; and

(4) inform the customer that if the firm does not receive a response to the request under paragraph (3) in the time specified, the firm will suspend or cancel the use of the credit card or retail revolving credit facility.

6.7.32

(1) The options a firm may set out under CONC 6.7.31R(3) in relation to a credit card or retail revolving credit include, for example, increasing the amount of monthly payments under a repayment plan, or transferring the balance to a fixed-sum unsecured personal loan.

(2) CONC 6.7.31R does not prevent a firm from treating the customer more favourably, for example by writing off the balance on the account.

(3) CONC 6.7.31R does not specify a particular form of words to be used, and firms have discretion to tailor the language and tone of the communication required by that rule to the circumstances of the individual customer.

(4) Where the firm complies with CONC 6.7.31R(2), the firm may in addition provide the customer with the name and contact details of one or more other authorised persons who have permission to carry on debt counselling, provided that to do so is consistent with the firm’s obligations under the regulatory system.

6.7.33

(1) The aim of the options a firm sets out under CONC 6.7.31R(3) should be that the customer repays the balance in a reasonable period.

(2) The FCA expects a “reasonable period” under paragraph (1), CONC 6.7.37R and CONC 6.7.38G to usually be between three and four years. Only in exceptional circumstances should the repayment period extend beyond four years; and even in such cases, the extension should not be significant and there should be no additional cost to the customer as a result of the repayment period extending beyond four years. When setting the reasonable repayment period, firms may take into account the amount of the outstanding balance and minimum repayment amount. For example, where balances are relatively low this could point to a shorter reasonable repayment period.

6.7.34

References in CONC 6.7.27R, CONC 6.7.31R(3) and CONC 6.7.32G(1) to a customer increasing payments to the firm include circumstances where the amount a customer pays remains fixed at the same amount the customer was
previously paying but, assuming there is no further spending on the account, represents an increase in the percentage of the outstanding principal that is repaid each month as the balance reduces.

6.7.35 R

(1) Where a customer does not respond to a firm’s request under CONC 6.7.31R(3), a firm must, at the end of the period specified in the request, suspend or cancel the customer’s use of the credit card or retail revolving credit facility.

(2) Where a customer confirms that one or more of the options proposed under CONC 6.7.31R(3) is sustainable, but states that they will not make the increased payments, a firm must suspend or cancel the customer’s use of the credit card or retail revolving credit facility.

(3) Where a firm suspends the customer’s use of the credit card or retail revolving credit facility under paragraph (1) and the customer subsequently responds to the firm’s request under CONC 6.7.31R(3), the firm may withdraw the suspension if this would be in line with the other provisions in this section.

6.7.36 G

Where a firm suspends or cancels the customer’s use of the credit card or retail revolving credit facility under CONC 6.7.35R the firm is not, unless the customer responds to the firm’s request under CONC 6.7.31R(3), required to take further steps under CONC 6.7.37R to CONC 6.7.39R. Firms are however reminded of CONC 6.7.3AR, which requires firms to take appropriate action where there are signs of actual or possible financial difficulties, and CONC 7.3.4R, which requires firms to treat customers in default or arrears difficulties with forbearance and due consideration.

6.7.37 R

Where a customer:

(1) confirms to the firm that the options set out under CONC 6.7.31R(3) are unsustainable; or

(2) informs the firm that they will increase payments in accordance with one of the options proposed under CONC 6.7.31G(3) but the patterns of payments actually made under the repayment plan after it is put in place, or other indicators, show that the customer is unlikely to repay the balance in a reasonable period,

the firm must treat the customer with forbearance and due consideration.

6.7.38 G

(1) The steps a firm takes to treat a customer with forbearance under CONC 6.7.37R should have the aim of assisting the customer to make sustainable repayments to repay the outstanding balance in a reasonable period, and may include reducing, waiving or cancelling any interest, fees or charges.

(2) The FCA expects that it will generally be necessary for firms to suspend or cancel the use of the credit card or retail revolving credit facility of a customer that the firm is required to treat with forbearance under CONC 6.7.37R with a view to ensuring the customer repays the outstanding balance in a reasonable period. This expectation does not apply, however, where the suspension or
cancellation of use of the credit facility would cause a significant adverse impact on the customer’s financial situation, for example where the customer depends on the credit facility for meeting essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills) or the purchase of essential items (which may include but is not limited to items such as school uniform, baby essentials or a refrigerator). Equally, the FCA considers that it will generally not be appropriate to withdraw the suspension of the use of a customer’s credit facility under CONC 6.7.35R(3) if the firm is required to treat the customer with forbearance under CONC 6.7.37R.

6.7.39 Where a firm does not suspend or cancel the use of the credit card or retail revolving credit facility of a customer falling under CONC 6.7.30R, the firm must take reasonable steps to ensure that the customer does not, in the 18-month period immediately following, repay an amount to the firm towards the credit card or retail revolving credit balance that comprises a lower amount in principal than in interest, fees and charges in relation to any spending on the card in this period.

6.7.40 Compliance with any of the requirements in CONC 6.7.27R to CONC 6.7.39R does not remove or reduce the obligation on a firm to:

1. take appropriate action where there are signs of actual or possible financial difficulties under CONC 6.7.3AR; or

2. treat customers in default or arrears difficulties with forbearance and due consideration under CONC 7.3.4R,

and vice versa.
6.8 Post contract business practices: credit brokers

Application

6.8.1 This section applies to a firm with respect to credit broking.

Business practices

6.8.2 Where a firm takes on responsibility for giving information to a customer or receiving information from a customer in accordance with provisions of the CCA (for example, supplying a copy of an executed regulated credit agreement under section 61A of the CCA) the firm should ensure it is familiar with the relevant statutory requirements and has adequate system and procedures in place to comply with the provision in question.

Refunds of brokers’ fees

6.8.3 (1) Under section 155 of the CCA an individual has a right to a refund of the firm’s fee (less £5) (or for that fee not to be payable) where the individual has not entered into an agreement to which section 155 applies within six months of an introduction:

(a) to a source of credit or of bailment (or in Scotland of hire); or

(b) to another firm that carries on credit broking of the kind specified in article 36A(1)(a) to (c) of the RAO disregarding the effect of paragraph (2) of that article (that is, the effecting of an introduction to a lender or an owner, or to another person who effects such introductions by way of business).

[Note: paragraph 6.1 of CBG]

(2) It is immaterial for the purposes of section 155 of the CCA why no agreement has been entered into (for example, an individual should be entitled to a refund where the individual decides for any reason not to enter into an agreement within the relevant time period).

[Note: paragraph 6.2 of CBG]

(3) Section 155 does not apply where the introduction is for a regulated mortgage contract or a home purchase plan and the person charging the fee is an authorised person or an appointed representative. Arranging and advising in relation to regulated mortgages contracts and home purchase plans are regulated activities under the Regulated Activities Order and carrying on those activities would require permissions covering those activities.
(4) In relation to a credit agreement the refund would apply to any sum which is an amount that is or would enter in to the total charge for credit paid or payable to or via the credit broker whether or not the firm describes it as a fee or commission.

[Note: paragraphs 6.11 and 6.13 of CBG]

(5) Where an individual withdraws from a regulated credit agreement under section 66A of the CCA or cancels a cancellable agreement (see section 67 of the CCA) under section 69 of the CCA the agreement is treated as never having been entered into and hence the period referred to in section 155 continues to apply in these circumstances.

[Note: paragraph 6.10 of CBG]

6.8.4 Where section 155 of the CCA applies, a firm must respond promptly to a request for a refund; this includes making payment of the refund promptly if a refund is payable.

[Note: paragraph 6.17 of CBG]

6.8.4A If a customer has not entered into an agreement referred to in section 155(2) of the CCA within six months of the customer being introduced by the firm to a potential source of credit or of bailment (or in Scotland of hire), or to another firm that carries on credit broking of the kind specified in article 36A(1)(a) to (c) of the RAO (disregarding the effect of paragraph (2) of that article), as soon as reasonably practicable after the expiry of that six-month period a firm must by any method clearly bring to the customer’s attention:

(1) the right to request a refund under section 155 of the CCA; and

(2) how to exercise the right to request the refund.

[Note: paragraph 6.19d of CBG]

6.8.4B The FCA would consider it to be reasonably practicable to comply with CONC 6.8.4A R within five working days of the expiry of the six-month period.

6.8.5 (1) An individual does not need to refer to the right under section 155 of the CCA in order to be entitled to a refund.

(2) A firm should respond promptly to a request for a refund. Firms are reminded of the rule in CONC 11.1.12R to return sums without undue delay, and within 30 calendar days, on cancellation of a distance contract.

(3) In circumstances where individuals request refunds and the firm knows, or ought to know, that agreements to which section 155 applies would not be entered into within six months, the firm should not make the individuals wait for the six month period to elapse before making the refund.
[Note: paragraphs 6.17 and 6.18 of CBG]
Chapter 7

Arrears, default and recovery
(including repossessions)
7.1 Application

Who? What?

7.1.1 This chapter applies, unless otherwise stated in or in relation to a rule, to:

(1) a firm with respect to consumer credit lending;
(2) a firm with respect to consumer hiring;
(3) a firm with respect to operating an electronic system in relation to lending, in relation to a borrower under a P2P agreement;
(4) a firm with respect to debt collecting.

7.1.2 The following sections provide otherwise for application:

(1) CONC 7.12 (lenders’ responsibilities in relation to debt) applies only to firms in respect of consumer credit lending;
(2) CONC 7.17 to CONC 7.19 apply only to firms operating electronic systems in relation to lending in relation to borrowers under P2P agreements as set out in those sections.

7.1.3 In accordance with CONC 1.2.2 R firms must ensure that their employees and agents comply with CONC and must take reasonable steps to ensure that other persons acting on the firm’s behalf act in accordance with CONC.

(2) The rule in CONC 1.2.2 R is particularly important in relation to the requirements in CONC 7, for example, in dealing with an individual from whom the person referred to in the rule is seeking to collect a debt.

(3) In this chapter the expression “arrears” includes any shortfall in one or more payment due from a customer under an agreement to which the chapter applies.

Agreements where there is a guarantor etc

7.1.4 In this chapter, except for CONC 7.6.15AG:

(a) a reference to a borrower, a customer or a hirer includes a reference to an individual other than the borrower or the hirer.
(in this chapter, referred to as “the guarantor”) who has provided a guarantee or an indemnity (or both) in relation to:

(i) a regulated credit agreement; or

(ii) a regulated consumer hire agreement; or

(iii) a P2P agreement in respect of which the borrower is an individual;

where it would not do so but for this rule;

(b) a reference (other than in this rule) to a credit agreement, a consumer hire agreement or a P2P agreement includes a reference to the document that includes the guarantee or the indemnity (or both);

(c) a reference to a repayment includes a reference to a payment due under the guarantee or under the indemnity;

(d) a reference to paying or repaying the debt includes a reference to making (in whole or in part) a payment due under the guarantee or under the indemnity; and

(e) a reference to the adequate explanation required by CONC 4.6.2R includes a reference to the adequate explanation required by CONC 4.6.5R.

(2) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

(3) This rule does not apply to CONC 7.3.1G, CONC 7.4.1R, CONC 7.4.2R, CONC 7.5.1G, CONC 7.6.1AR, CONC 7.6.2BG, CONC 7.15.3G, CONC 7.15.4R, CONC 7.15.5G, or CONC 7.17 to CONC 7.19.

In relation to CONC 7.1.4(1)(a), firms are reminded that the definitions of customer and borrower include, in relation to debt collecting and debt administration, a person providing a guarantee or indemnity under the agreement. (See CONC 7.3.1G(2).)
7.2 Clear effective and appropriate arrears policies and procedures

Arrears policies

7.2.1 R A firm must establish and implement clear, effective and appropriate policies and procedures for:

(1) dealing with customers whose accounts fall into arrears;

[Note: paragraph 7.2 of ILG]

(2) the fair and appropriate treatment of customers, who the firm understands or reasonably suspects to be particularly vulnerable.

[Note: paragraphs 7.2 and 7.2(box) of ILG and 2.2 (box) of DCG]

7.2.2 G Customers who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable customers.

[Note: paragraph 2.2 (box) of DCG]

7.2.3 G In developing procedures and policies for dealing with customers who may not have the mental capacity to make financial decisions, firms may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines “Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt”.

[Note: paragraph 3.7r (box) of DCG]
7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors

7.3.1 (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.

Dealing fairly with customers in arrears or default

7.3.2 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]

Forbearance and due consideration

7.3.3 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 unmade 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.
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]

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).

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]

(deleted)

(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 the Money Advice Service; 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
CONC 7 : Arrears, default and recovery (including repossessions)

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

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

[Note: paragraphs 3.7i of DCG and 7.18 of ILG]

3. to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.

[Note: paragraph 3.7b of DCG]

7.3.10A G (1) An example of behaviour by or on behalf of a firm which is likely to contravene CONC 7.3.10R and Principle 6 is pressurising a customer to raise funds to repay a debt by arranging the receipt of a lump sum from the customer’s pension scheme.

(2) Firms are also reminded of PERG 12.6G which contains guidance on the regulated activity of advising on conversion or transfer of pension benefits.

7.3.11 R A firm must suspend the active pursuit of recovery of a debt from a customer for a reasonable period where the customer informs the firm that a debt counsellor or another person acting on the customer’s behalf or the customer is developing a repayment plan.

[Note: paragraphs 7.12 of ILG and 3.7m of DCG]

7.3.12 G 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 ...
A firm should consider extending the period for a further thirty days where there is reasonable evidence demonstrating progress to agreeing a plan.

[Note: paragraphs 7.12 (box) ILG and 3.7m of DCG]

**7.3.13** G
A firm seeking to recover debts should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

[Note: paragraphs 7.16 (box) of ILG and 3.7k of DCG]

### Proportionality

**7.3.14** R
(1) A firm must not take disproportionate action against a customer in arrears or default.

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

(2) In accordance with (1) a firm 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.

[Note: paragraph 7.14 (box) of ILG]

**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]
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]
7.4 Information on status of debts

7.4.1 A firm must provide the customer or another person acting on behalf of the customer with information on the amount of any arrears and the balance owing.

[Note: paragraph 3.3f of DCG]

7.4.2 Where:

(1) a customer offers a settlement payment lower than the total amount owing; or

(2) a lender under a regulated credit agreement or an owner under a regulated consumer hire agreement decides to stop pursuing a customer in respect of a debt arising under the agreement;

and the debt (or part of it) continues to exist notwithstanding the acceptance of the customer's offer or the decision to cease to pursue the debt, the lender or owner must ensure that the continuing existence of the debt and the possibility of the customer being pursued by another firm who purchases the debt is explained in clear terms to the customer.

[Note: paragraph 3.3i of DCG]
7.5 Pursuing and recovering repayments

7.5.1 (1) Failure to comply with CONC 6.5.2 R, which sets out when a firm must give notice to a customer where a regulated credit agreement has been assigned to a third party, will be taken into account by the FCA in taking decisions about a firm's permission or about taking other action.

[Note: paragraph 3.7g of DCG]

(2) CONC 6.5.2 R makes it clear that where arrangements for servicing the credit change at the time of the assignment of a regulated credit agreement, notice must be given to the customer as soon as reasonably possible. A firm should give notice as required under that rule in order that any change should not adversely impact on a customer's existing repayment arrangements. In addition, if arrangements for servicing the debt otherwise change so far as the customer is concerned, the firm should notify the customer on or before that change.

[Note: paragraph 3.7h of DCG]

7.5.2 A firm must not pursue an individual whom the firm knows or believes might not be the borrower or hirer under a credit agreement or a consumer hire agreement.

[Note: paragraph 3.5f of DCG]

7.5.3 A firm must not ignore or disregard a customer's claim that a debt has been settled or is disputed and must not continue to make demands for payment without providing clear justification and/or evidence as to why the customer's claim is not valid.

[Note: paragraph 3.7o of DCG]

7.5.4 A firm acting on behalf of a lender or owner must, unless the firm has authority from the lender or owner to accept such an offer, refer a reasonable offer by the customer to pay by instalments to the lender or owner.

[Note: paragraph 3.9f of DCG]
7.5.5 A firm acting on behalf of a lender or owner must pass on payments received from a customer and/or details of a customer’s outstanding balance to the lender or owner in a timely manner or, provided the effect of the agreement does not impact adversely on the customer, in accordance with an agreement between the firm and lender or owner in question.

[Note: paragraph 3.9g of DCG]

7.5.6 A timely manner in CONC 7.5.5 R would normally be within five working days of receipt of payment by the firm.

[Note: paragraph 3.9g of DCG]
7.6 Exercise of continuous payment authority

Recovery and continuous payment authorities etc.

7.6.1 A firm must not exercise its rights under a continuous payment authority (or purport to do so):

(a) unless it has been explained to the customer that the continuous payment authority would be used in the way in question; and

(b) other than in accordance with the terms specified in the credit agreement or the P2P agreement.

(2) If a firm wishes a customer to change the terms of a continuous payment authority it must contact the customer and:

(a) provide the customer with an adequate explanation of the reason for and effect of the proposed change, including any effect it would have on the matters in CONC 4.6.2R (2); and

(b) once it has done so, obtain the consent of the customer.

[Note: paragraph 3.9mi of DCG]

7.6.2 A firm should not:

(1) request a payment service provider to make a payment from the customer’s payment account unless:

(a) (i) the amount of the payment (or the basis on which payments may be taken) is specified in or permitted by the credit agreement or P2P agreement; and

(ii) the amount of the payment (or the basis on which payments may be taken) was referred to in the adequate explanation required by CONC 4.6.2R; or

(b) the firm has complied in relation to such a request with CONC 7.6.1R (2);

(2) request a payment service provider to make a payment to recover default fees or other sums unless:

(a) (i) the amount (or the basis on which default fees or other sums may be taken) is specified in the credit agreement or P2P agreement; and
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(ii) the amount (or the basis on which default fees or other sums may be taken) was referred to in the adequate explanation required by CONC 4.6.2 R; or

(b) the firm has complied in relation to such a request with CONC 7.6.1R (2);

(3) other than where CONC 7.6.14R (2) applies, request a payment service provider to make a payment from the customer’s payment account of an amount that is less than the amount due at the time of the request, unless the firm:

(a) (i) is permitted to do so by the credit agreement or P2P agreement; and

(ii) the adequate explanation required by CONC 4.6.2 R indicated that part payment (a sum due which is less than the full sum due at the time the firm’s payment request is made) could be requested if the full amount was not available and specified the basis on which and the frequency with which such requests for payment could be made and any minimum amount or percentage that would be requested; or

(b) the firm has complied in relation to such a request with CONC 7.6.1R (2).

(4) request a payment service provider to make a payment from the customer’s payment account before the due date of payment as specified in the credit agreement or P2P agreement, unless the firm has complied with CONC 7.6.1R (2);

(5) request a payment service provider to make a payment from the customer’s payment account after the due date on a date, or within a period, or with a frequency other than as specified in the credit agreement or P2P agreement and referred to in the adequate explanation, unless the firm has complied with CONC 7.6.1R (2);

(6) request a payment service provider to make a payment from the payment account of a third party other than as specifically agreed with the third party or agreed with the customer following the third party’s confirmation to the firm that the third party consents to the arrangement.

[Note: paragraph 3.9mi of DCG]

7.6.2A

(1) This rule applies where the terms of a regulated credit agreement or a P2P agreement do not provide for a continuous payment authority and it is proposed that a customer will grant a continuous payment authority to:

(a) a lender or a person who has permission to carry on the activity of operating an electronic system in relation to lending; or

(b) a debt collector provided that the debt collector is acting under an arrangement with the lender or the person who has permission to carry on the activity of operating an electronic system in relation to lending, the effect of which is that a payment by the customer to the debt collector amounts to a discharge or reduction of the debt due to the lender.
(2) The firm which proposes the continuous payment authority to the customer must, before the customer grants the continuous payment authority:

(a) explain why a continuous payment authority is proposed;
(b) provide the customer with an adequate explanation of the matters in CONC 4.6.2R(2);
(c) give the customer information, on paper or in another durable medium, setting out, in plain and intelligible language, the terms of the continuous payment authority and how it will operate; and
(d) give the customer a reasonable opportunity to consider the explanations required by (a) and (b) and the information required by (c).

(3) A firm must not propose that a customer should grant a continuous payment authority, and must not exercise rights under such an authority, in respect of repayments under a regulated credit agreement or a P2P agreement, the terms of which do not already provide for a continuous payment authority, unless:

(a) the customer is in arrears or default in respect of the agreement; and
(b) a lender or a person who has permission to carry on the activity of operating an electronic system in relation to lending, or a debt collector acting under an arrangement with the lender or the person, is exercising forbearance in respect of the customer in relation to the agreement.

1 CONC 7.6.2AR enables a continuous payment authority to be put in place (for example, for a repayment plan) without necessarily requiring an amendment to the agreement. But CONC 7.6.2AR applies only where the customer is in arrears or default, and the creation of the continuous payment authority supports the fair treatment of the customer and facilitates the exercise of forbearance (see CONC 7.3.4R and CONC 7.3.5G).

(2) CONC 7.6.2AR also permits a continuous payment authority to be granted to a debt collector, provided that the debt collector is acting under an arrangement with a lender or a person who has permission to carry on the activity of operating an electronic system in relation to lending, such that a payment to the debt collector is treated as a payment to the lender, and the requirements of CONC 7.6.2AR(3) are met.

(3) CONC 7.6.2AR is subject to the rule in CONC 7.6.12R which restricts firms to two requests under a continuous payment authority for a sum due for high-cost short-term credit.

(4) Whether a forbearance that involves the creation of a continuous payment authority amounts to an agreement that varies or supplements a regulated credit agreement (rather than merely an indulgence to the customer) will depend on the circumstances. If there is an agreement that varies or supplements a regulated credit
A firm must exercise its rights under a continuous payment authority in a manner which is reasonable, proportionate and not excessive and must exercise appropriate forbearance if it becomes aware that the customer is or may be experiencing financial difficulties.

[Note: paragraph 3.9mii of DCG]

Whether exercising rights under a continuous payment authority is reasonable, proportionate and not excessive (as regards the frequency or period of collection attempts), will depend on the circumstances, including:

1. whether the firm is aware or has reason to believe that the customer is in actual or potential financial difficulties which the exercise of rights under a continuous payment authority may exacerbate; and

2. whether the customer has been notified of the failure to collect the payment and has responded to contact from the firm.

[Note: paragraph 3.9mii of DCG]

A firm is likely to contravene CONC 7.6.3 R if it:

1. requests a payment service provider to make a payment from the customer's payment account before income or other funds may reasonably be expected to reach the account; for example, this is likely to be relevant where a firm is aware of the customer's salary payment date; or

2. requests a payment service provider to make a payment from the customer's payment account where it has reason to believe that there are insufficient funds in the account or that taking the payment would leave insufficient funds for priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills or utility bills); or

3. requests a payment service provider to make a part payment (a sum due which less than the full sum due at the time the firm's payment request is made) of the sum due from the customer's payment account before it has made reasonable attempts to collect the full payment of the sum due on the due date; or

4. continues to exercise its rights under the continuous payment authority for an unreasonable period after the payment due date without taking steps to establish the reason for the payment failure.

[Note: paragraph 3.9mii of DCG]
7.6.6 **G** Where permissible, a **firm** should only make a reasonable number of payment requests to a **payment service provider** to collect a part payment (a sum due which is less than the full sum due at the time the **firm**'s payment request is made) from the **customer**'s payment account, having regard to the possibility that the **customer** may be in financial difficulties.

**Note:** paragraph 3.9mii (box) of DCG

7.6.7 **R** A **firm** must not exercise its rights under a **continuous payment authority**:  

(1) if the **customer** provides reasonable evidence to the **firm** of being in financial difficulties and the **customer** cannot afford to repay the debt; or  

(2) where the **firm** otherwise becomes aware of the **customer** being in financial difficulties and that the **customer** cannot afford to repay the debt.

**Note:** paragraph 3.9mii (box) of DCG

7.6.8 **G** (1) If a **firm** becomes aware that a **customer** is in financial difficulties, the **firm** should reassess the payment arrangement and should consider reasonable proposals to revise the payment schedule and alternative repayment arrangements.

**Note:** paragraph 3.9mii (box) of DCG

(2) Where a **customer** informs a **firm** of being in financial difficulties, pending receipt of evidence to that effect, a **firm** should consider suspending exercise of its rights under a **continuous payment authority**.

7.6.9 **G** In the **FCA**'s view, a **firm**'s inability to recover the whole of the amount due by the end of the next **working day** after the date on which it was due would indicate that the **customer** may be experiencing financial difficulties. In such a case, a **firm** should suspend exercising its rights under the **continuous payment authority** until it has made reasonable efforts to contact the **customer** to establish the reason why payment was unsuccessful and whether the **customer** is in financial difficulties.

**Note:** paragraph 3.9mii (box) of DCG

7.6.10 **G** If the **firm** and the **customer** have agreed an alternative payment date as a contingency option if payment is not available on the due date, the **firm** should suspend the exercise of its rights under the **continuous payment authority** after the due date, and again after the alternative payment date (if the **firm** is unable to recover the amount due at the end of that day) and make reasonable efforts (in accordance with **CONC 7.6.9 G**) to contact the **customer** to establish the reason why payment was unsuccessful and whether the **customer** is in financial difficulties.

**Note:** paragraph 3.9mii (box) of DCG
If reasonable efforts to contact the customer are unsuccessful or a customer refuses to engage with the firm and there is no further evidence of financial difficulties, any subsequent exercise of its rights under the continuous payment authority should be reasonable and not excessive, having regard to the possibility that an unresponsive customer may nevertheless be in financial difficulties and that a customer who was not in financial difficulties at the time of contact may subsequently be in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

Continuous payment authorities and high-cost short-term credit

(1) Subject to (3) to (5), a firm must not request a payment service provider to make a payment, under a continuous payment authority, to collect (in whole or in part) a sum due for high-cost short-term credit if it has done so in connection with the same agreement for high-cost short-term credit on two previous occasions and those previous payment requests have been refused.

(2) For the purposes of (1) and (3):
   (a) if high-cost short-term credit has been refinanced, except in exercise of forbearance, the agreement is to be regarded as the same agreement; and
   (b) “refinance” and “exercise forbearance” have the same meaning as in CONC 6.7.17 R.

(3) Where a firm exercises forbearance:
   (a) paragraph (1) applies or continues to apply to the agreement; but
   (b) any refusal of a payment request that took place before the time at which the forbearance was granted is to be disregarded for the purposes of (1).

(4) Paragraph (5) applies following the refusal of two payment requests a firm has made to a payment service provider under a continuous payment authority to collect a sum due for high-cost short-term credit, where the firm proposes to refinance the high-cost short-term credit in question in accordance with CONC 6.7.17 R to CONC 6.7.23 R.

(5) If the firm contacts the customer and, in the course of an dialogue between the firm and the customer:
   (a) the firm notifies the customer of the refusal of the payment requests;
   (b) the firm reminds the customer of the matters in CONC 4.6.2R (2), taking account of any proposed changes to the terms of the continuous payment authority that will apply following the refinance if the customer consents; and
   (c) the customer gives express consent to the firm further exercising its rights under the continuous payment authority following the refinance;
the firm may then make further payment requests under the continuous payment authority following the refinance in accordance with CONC 7.6, and paragraph (1) applies as if the firm had not made a payment request under the continuous payment authority before the refinance.

(6) This rule does not apply to an agreement which provides for repayment in instalments.

[Note: Until the end of 30 June 2014, transitional provisions apply to CONC 7.6.12 R: see CONC TP 3.4]

Continuous payment authorities and high-cost short-term credit: instalment payments

(1) Where:

(a) high-cost short-term credit provides for repayment in instalments; and

(b) a firm has on two previous occasions made a payment request, under a continuous payment authority, to collect (in whole or in part) the same instalment due under the agreement, which have been refused;

subject to (3) and (4), the firm must not make a further payment request under the continuous payment authority to collect that instalment.

(2) The firm must not make a further payment request under the continuous payment authority to collect any other instalment that is or becomes due under the agreement, unless any request is in accordance with CONC 7.6 and in the course of a dialogue between the firm and the customer:

(a) the firm notifies the customer of the refusal of the payment requests;

(b) repayment of the instalment referred to in (1)(b) has been made using a method other than a continuous payment authority and the customer is not in arrears; and

(c) where (a) and (b) apply, the firm has reminded the customer of the date and amount of the next instalment.

(3) If, where the prohibition in (1) applies, a firm exercises forbearance within the meaning of CONC 6.7.17 R the firm must not make a further payment request under the continuous payment authority to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:

(a) a payment request is in accordance with CONC 7.6;

(b) the firm notifies the customer of the refusal of the payment requests; and

(c) in the course of a dialogue between the firm and the customer, the firm reminds the customer of the date and amount of the next instalment and following which the customer gives express consent to further payment requests being made under the continuous payment authority.
(4) If, where the prohibition in (1) applies, a firm adds no charge or additional interest in connection with missing a payment on the due date, the firm must not make a further payment request under the continuous payment authority to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:

(a) a payment request is in accordance with CONC 7.6;

(b) the customer has missed making a payment on the due date; and

(c) in the course of a dialogue between the firm and the customer, the firm reminds the customer of the date and amount of the next instalment and following which the customer gives express consent to further payment requests being made under the continuous payment authority.

[Note: Until the end of 30 June 2014, transitional provisions apply to CONC 7.6.13 R: see CONC TP 3.5]

(1) Subject to (2), a firm must not request a payment service provider to make a payment under a continuous payment authority to collect a sum due for high-cost short-term credit if that sum is less than the full sum due at the time the request is made.

(2) Where a firm:

(a) following contact with a customer, refinances the agreement in accordance with CONC 6.7.17 R to CONC 6.7.23 R by granting an indulgence which allows for one or more repayments of a reduced amount under a repayment plan;

(b) notifies the customer of the number and frequency of repayments and their amount under the repayment plan; and

(c) the customer gives express consent to the firm to make payment requests to collect the repayments notified under the plan;

[Note: Until the end of 30 June 2014, transitional provisions apply to CONC 7.6.14 R: see CONC TP 3.6]

paragraph (1) does not prevent the firm from making a payment request in accordance with CONC 7.6 under a continuous payment authority to collect repayments of those amounts in accordance with the plan.

(1) CONC 7.6.12 R, CONC 7.6.13 R and CONC 7.6.14 R do not prevent a firm accepting payment (including a part payment) from a customer using a means of payment other than under a continuous payment authority. If, for example, a customer consents separately that a single payment of a specified amount may be taken on the same day or on another specified day using his or her debit card details, this is excluded from the definition of continuous payment authority.

(2) CONC 7.6.14 R does not prevent a firm from making a payment request concerning a sum due where the firm has varied an agreement so that the sum due is less than it was before the variation.
(3) Firms are reminded of their record-keeping obligations under SYSC 9.1.1 R and SYSC 9.1.1 AR (general rules on record-keeping) which in particular require sufficient records to be kept to ascertain that the firm has complied with all obligations with respect to customers. These should include, for example, arranging to keep records of payment requests (including refusals of payment requests) made under continuous payment authorities and to keep suitable written or other records of the consents referred to in CONC 7.6.1 R, CONC 7.6.12 R, CONC 7.6.13 R and CONC 7.6.14 R.

7.6.15A

(1) Paragraph (2) applies where a guarantor has provided a guarantee or an indemnity (or both) in respect of high-cost short-term credit. (See CONC 7.1.4 R for the meanings of “guarantor” and “guarantee”.)

(2) CONC 7.6.12 R and CONC 7.6.13 R apply to a continuous payment authority granted by the borrower and to a continuous payment authority granted by a guarantor separately. This means that the firm may make up to two requests for payment under a continuous payment authority granted by the borrower and, if those requests are unsuccessful, up to two requests for payment under a continuous payment authority granted by the guarantor.

Cancelling a continuous payment authority

7.6.16

A firm must not by any means improperly or unfairly inhibit or discourage a customer from cancelling a continuous payment authority including by:

(1) misleading the customer, expressly or by omission, regarding the right to cancel and how it may be exercised; or

(2) failing to respond promptly to requests by or on behalf of the customer to amend or cancel the continuous payment authority; or

(3) intimidating a customer who wishes to cancel the continuous payment authority; or

(4) requiring customers who wish to cancel the continuous payment authority to go through an unduly complicated process.

[Note: paragraph 3.9miv of DCG]

7.6.17

A firm must cease to exercise its rights under the continuous payment authority once it is notified that the continuous payment authority has been cancelled.

[Note: paragraph 3.9miv of DCG]
7.7 Application of interest and charges

7.7.1 G When levying charges for debt recovery on customers in default or arrears difficulties firms should consider their obligation under Principle 6 to pay due regard to the interests of customers and treat them fairly.

[Note: paragraphs 3.1 and 3.10 of DCG]

7.7.2 R A firm must not claim the costs of recovering a debt from a customer if it has no contractual right to claim such costs.

[Note: paragraph 3.11b of DCG]

7.7.3 R A firm must not cause a customer to believe that the customer is legally liable to pay the costs of recovery where no such obligation exists.

[Note: paragraph 3.11a of DCG]

7.7.4 G Where a firm has a contractual right to levy default charges, a regulated credit agreement must state the charges and the conditions for making the charge under, as the case may be, the Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014) or the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553).

[Note: paragraphs 3.11c of DCG and 7.15 of ILG]

7.7.5 R A firm must not impose charges on customers in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the firm.

[Note: paragraphs 3.11 of DCG and 7.15 of ILG]
7.8 Jurisdictional requirements

7.8.1 A firm dealing with a customer who is resident in a different jurisdiction to the jurisdiction of the firm’s place of business must ensure that it takes appropriate account of any differences in law and court procedure that may have a significant impact on the customer’s rights.

[Note: paragraph 2.3 of DCG]

7.8.2 CONC 7.8.1 R will apply, for example, where a firm’s place of business is in England and the customer resides in Scotland.

[Note: paragraph 2.3 of DCG]

7.8.3 A firm must not commence proceedings or threaten to commence proceedings in the wrong jurisdiction.

[Note: paragraph 3.5g of DCG]
7.9 Contact with customers

Contacting customers

7.9.1 A firm must ensure that a person contacting a customer on its behalf explains to the customer the following matters:

(1) who the person contacting the customer works for;

(2) the person’s role in or relationship with the firm; and

(3) the purpose of the contact.

[Note: paragraph 3.3c of DCG]

7.9.2 A firm must not in a communication with the customer make a statement which may induce the customer to contact the firm misunderstanding the reason for making contact.

[Note: paragraph 3.3d of DCG]

7.9.3 (1) An example of a misleading communication in CONC 7.9.2 R is a calling card left at the customer’s address which states or implies that the customer has missed a delivery and encourages the customer to make contact.

[Note: paragraph 3.3d (box) of DCG]

(2) The clear fair and not misleading rule in CONC 3.3.1 R also applies to a firm in relation to a communication with a customer in relation to credit agreement or a consumer hire agreement.

7.9.4 A firm must not contact customers at unreasonable times and must pay due regard to the reasonable requests of customers (for example, customers who work in a shift pattern) in respect of when, where and how they may be contacted.

[Note: paragraphs 3.3j and k of DCG]

7.9.5 A firm must not require a customer to make contact on a premium rate or other special rate telephone number the charge for which is higher than to a standard geographic telephone number.

[Note: paragraph 3.3l of DCG]
7.9.5A  

Firms should note the effect of the *call charges rule* in ■ GEN 7.

**Communication with third parties**

7.9.6  

A *firm* must not unfairly disclose or threaten to disclose information relating to the customer's debt to a third party.

[Note: paragraph 3.7p of DCG]

7.9.7  

When contacting a *customer*:

1. a *firm* must ensure that it does not act in a way likely to be publicly embarrassing to the *customer*; and

2. a *firm* must take reasonable steps to ensure that third parties do not become aware that the *customer* is being pursued in respect of a debt

[Note: paragraph 3.7q of DCG].

7.9.8  

The reasonable steps required by ■ CONC 7.9.7 R may, for example, require a *firm* to ensure that:

1. post sent by the *firm* is properly addressed to the *customer* and marked “private and confidential” or an expression to the same effect;

2. where the *firm* has a name which indicates its debt collection activities, its name is not shown so that third parties may see the name on the *firm’s* communications.

7.9.9  

■ CONC 7.9.7 R would not preclude a *firm* sending a statutory notice to a *customer’s* last known address, where it takes reasonable steps including those referred to in ■ CONC 7.9.8 G.

7.9.10  

A *firm* must not disclose details of a debt to an *individual* without first establishing, by suitably appropriate means, that the *individual* is (or acts on behalf of) the *borrower* or *hirer* under the relevant agreement.

[Note: paragraph 3.9b of DCG]

7.9.11  

A *firm* which:

1. threatens debt recovery action against the “occupier” of particular premises; or

2. sends a payment demand to all persons sharing the same name and date of birth or address as the *customer*;

is likely to contravene ■ CONC 7.9.10 R.

[Note: paragraphs 3.9a (box) and 3.9b (box) of DCG]
Debt collection visits

7.9.12 R Unless it is not practicable to do so, a firm must ensure that a person visiting a customer on its behalf:

(1) clearly explains to the customer the purpose and intended outcome of the proposed visit; and

[Note: paragraph 3.12 of DCG]

(2) gives the customer adequate notice of the date and likely time (at a reasonable time of day) of the visit.

[Note: paragraph 3.13g of DCG]

7.9.13 G Failure to explain the purpose and intended outcome of a proposed initial visit to the customer or to give adequate notice prior to a proposed initial visit to the customer may not contravene ■ CONC 7.9.12 R, provided that the customer is happy to speak to the person pursuing recovery of the debt at that time. However, where, at the initial visit the customer indicates a preference to use the first visit to agree a more convenient time for a future visit, the person pursuing recovery of the debt should respect the customer's wishes. It is important that the customer is given reasonable time to prepare for a visit and should not be coerced or pressurised into immediate discussions or decisions.

[Note: paragraph 3.13g (box) of DCG]

7.9.14 R A firm must ensure that all persons visiting a customer's property on its behalf act at all times in accordance with the requirements of ■ CONC 7 and do not:

(1) act in a threatening manner towards a customer;

(2) visit a customer at a time when they know or suspect that the customer is, or may be, particularly vulnerable;

(3) visit at an inappropriate location unless the customer has expressly consented to the visit;

(4) enter a customer's property without the customer's consent or an appropriate court order;

(5) refuse to leave a customer's property when it becomes apparent that the customer is unduly distressed or might not have the mental capacity to make an informed repayment decision or to engage in the debt recovery process;

(6) refuse to leave a customer's property when reasonably asked to do so;

(7) visit or threaten to visit a customer without the customer's prior agreement when a debt is deadlocked or reasonably queried or
disputed (see CONC 7.14 (Settlements, disputed and deadlocked debt)).

[Note: paragraphs 3.12 and 3.13 of DCG]

**7.9.15 G** It would normally be inappropriate to visit a *customer* at the *customer* place of work or at a hospital where the *customer* is a patient.
7.10 **Treatment of customers with mental capacity limitations**

7.10.1 **R** A *firm* must suspend the pursuit of recovery of a debt from a *customer* when:

(1) the *firm* has been notified that the *customer* might not have the mental capacity to make relevant financial decisions about the management of the *customer*’s debt and/or to engage in the debt recovery process at the time; or

(2) the *firm* understands or ought reasonably to be aware that the *customer* lacks mental capacity to make relevant financial decisions about the management of the *customer*’s debt and/or to engage in the debt recovery process at the time.

[Note: paragraphs 3.7r of DCG and 7.13 of ILG]

7.10.2 **G** A *firm* should allow a *customer* or a *person* acting on behalf of the *customer* a reasonable period of time to provide evidence as to the likely impact of any mental capacity limitation on the *customer*’s ability to engage with the *firm*.

[Note: paragraph 3.7r (box) of DCG]

7.10.3 **G** CONC 7.10.1 R does not prevent a *firm* from pursuing the debt through a responsible third party acting on behalf of the *customer*, where the *customer* has given prior consent, for example, pursuant to a registered lasting power of attorney.

[Note: paragraph 3.7r (box) of DCG]

7.10.4 **G** *Firms* should note CONC 7.2.1 R (and its accompanying guidance) which requires *firms* to establish and implement policies and procedures for the fair and appropriate treatment of particularly vulnerable *customers*. 
7.11 Disclosures relating to “authority” or “status”

7.11.1 When contacting customers, a firm must not misrepresent its authority or its legal position with regards to the debt or debt recovery process.

[Note: paragraph 3.4 of DCG]

7.11.2 For example, a person misrepresents authority or the legal position if they claim to work on instructions from the courts as bailiffs or, in Scotland, sheriff officers or messengers-at-arms, or in Northern Ireland, to work on instructions from the Enforcement of Judgements Office when this is untrue.

[Note: paragraph 3.5a of DCG]

7.11.3 A firm must not use official looking documents which are designed to, or are likely to, mislead a customer as to the status of the firm.

[Note: paragraph 3.3a of DCG]

7.11.4 A firm must not falsely suggest or state that it is a member of a trade body or is accredited by a trade body.

[Note: paragraph 3.5c (box) of DCG]

7.11.5 It is an offence under section 17 of the Legal Services Act 2007 to falsely imply that a person is entitled to carry on a reserved legal activity, for example, to conduct litigation or to appear before and address a court, or to take or use any relevant name, title or description, for example, “solicitor”.

[Note: paragraph 3.5c (box) of DCG]

7.11.6 A firm must not suggest or state that action can or will be taken when legally it cannot be taken.

[Note: paragraph 3.5b of DCG]

7.11.7 Examples of where a firm is likely to contravene CONC 7.11.6 R include where a firm or a person acting on its behalf:
(1) states or implies that bankruptcy or sequestration proceedings may be initiated when the balance of the outstanding debt is too low to qualify for such proceedings;

(2) states or implies that steps will be taken to enforce a debt where the customer is making payments under a Debt Payment Programme Agreement agreed under the Debt Arrangement and Attachment (Scotland) Act 2002;

(3) claims a right of entry will be exercised when no court order to this effect has been granted; or

(4) states that goods will be repossessed when they are “protected goods” (as defined under section 90(7) of the CCA) and no specific authorisation to repossess the goods has been granted by a court.

[Note: paragraph 3.5b (box) of DCG]

A firm must not suggest or state that it will commence proceedings for a warrant of execution or an attachment of earnings order when a court judgment has not been obtained, or that it will take any other enforcement action before it is possible to know whether such action will be permissible.

[Note: paragraph 3.5c of DCG]

A firm must not suggest or state that an action has been taken when no such action has been taken.

[Note: paragraph 3.5d (box) of DCG]
7.12 Lenders’ responsibilities in relation to debt

Application

This section applies to a firm with respect to consumer credit lending.

Unfair business practices

A firm must not:

1. refuse to deal with a not-for-profit debt advice body, debt counsellor, debt adjuster or with another person acting on behalf of a customer, unless there is an objectively justifiable reason for doing so;

   [Note: paragraphs 3.9c of DCG and 3.48 of DMG]

2. unless the credit agreement requires payments to be made to a third party, refuse to accept a payment tendered to the firm by the customer or by a person acting on behalf of the customer;

   [Note: paragraphs 3.8 of DCG and 3.49a of DMG]

3. refuse to deal with a customer who is developing a repayment plan, a third party who is assisting a customer to develop a repayment plan or a third party who is developing a debt management plan for the customer's debts, unless there is an objectively justifiable reason for doing so;

   [Note: paragraphs 3.9c of DCG and 3.49b of DMG]

4. where a person is acting on behalf of a customer, directly contact the customer without the customer's consent, unless there is an objectively justifiable reason for doing so;

   [Note: paragraph 3.9d of DCG]

5. operate a policy:

   a. of only negotiating the freezing of interest and charges on a customer's debts where the lender has an existing arrangement with a person acting on behalf of the customer; or

   [Note: paragraph 3.49e of DMG]

   b. of refusing to negotiate with certain third parties or with a customer developing their own repayment plan; or
[Note: paragraph 3.49c (box) of DMG]

(6) return or refuse a repayment or refuse to credit a repayment to a customer's account merely because the repayment is tendered by a debt management firm.

[Note: paragraph 3.49a of DCG]

(1) ■ CONC 1.2.2 R requires a firm to ensure its employees and agents comply with CONC and that it takes reasonable steps to ensure other persons who act on its behalf do so. This rule would apply where a debt collector acts as agent or on behalf of a lender.

(2) Situations where it may be justified for a firm to refuse to deal with a person acting on behalf of a customer may include, for example, refusing to deal with that person where the firm is able to show that the person has failed to comply with consumer protection legislation or with FCA rules.

[Note: paragraph 3.48 of DMG]

(3) It may be justified for a firm to contact a customer directly where:

(a) repeated unsuccessful efforts have been made to contact a person acting on behalf of the customer; or

[Note: paragraphs 3.9d of DCG and 3.49c (box) of DMG]

(b) the firm reasonably believes the person acting on behalf of the customer is acting against the best interests of the customer.

(4) Situations where it would be justified for a firm to contact a customer directly include, for example:

(a) sending a statutory notice, taking the reasonable steps required by ■ CONC 7.9.7 R; or

(b) where the sole purpose of the contact is to signpost the customer to not-for-profit debt advice bodies.

(5) Where a firm is in dispute with a person acting on behalf of the customer it should make its position known to that person and to the customer as soon as practicable.

[Note: paragraph 3.49d of DMG]

(6) The FCA does not believe it is justified to bypass contacting a person acting on behalf of a customer merely because that person has not agreed to comply with the Insolvency Service's Debt Management Protocol.
7.13 Data accuracy and outsourced activities

Data accuracy

The obtaining, recording, holding and passing on of information about individuals for the purposes of tracing a customer and/or recovering a debt due under a credit agreement or a consumer hire agreement or a P2P agreement will involve the processing of personal data. Accordingly, firms processing such data are data controllers or data processors and are obliged to comply with data protection legislation and, in particular, to adhere to the data protection principles.

[Note: paragraph 3.16 of DCG]

A firm must take reasonable steps to ensure that it maintains accurate and adequate data (including in respect of debt and repayment history) so as to avoid the risk that:

1. an individual who is not the true borrower or hirer is pursued for the repayment of a debt; and

2. the borrower or hirer is pursued for an incorrect amount.

[Note: paragraphs 3.19 of DCG and 7.11 (box) of ILG]

A firm must endeavour to ensure that the information it passes on to its agent or to a debt collector or to a tracing agent (a person that carries on the activity in article 54 of the Exemption Order), whether for the firm’s or another person’s business, or to any other person involved in recovering the debt or, where appropriate, to a credit reference agency is accurate and adequate so as to facilitate the tracing and identification of the true borrower or hirer.

[Note: paragraphs 3.20 of DCG and 7.11 (box) ILG]

Before pursuing a customer for the repayment of a debt, a firm must take reasonable steps to verify the accuracy and adequacy of the available data so as to ensure that the true customer is pursued for the debt and that they are pursued for the correct amount.

[Note: paragraphs 3.7e and 3.23a of DCG]
A firm should ensure (subject to any legal requirements) that adequate and accurate information it holds about a customer in relation to a debt is made available to persons involved on its behalf in the debt recovery process. Information relating to the customer which should be made available to agents or employees includes, for example:

(1) being in financial difficulties;
(2) being particularly vulnerable;
(3) disputing the debt;
(4) a repayment plan or forbearance being in place;
(5) having a representative acting on the customer's behalf.

[Note: paragraph 3.23b (box) of DCG]

A firm should not impose limitations on the number or the extent of reasonable applications that can be made to it for documents or other relevant information pertaining to a customer in respect of which it is, or has been, the lender or owner, by a firm seeking such information to facilitate its pursuance of the relevant debt.

[Note: paragraph 3.23i of DCG]

Where a firm has established that an individual being pursued for a debt is not the true borrower or hirer under the credit agreement, regulated credit agreement, consumer hire agreement or regulated consumer hire agreement or that the debt has been paid, the firm must update its records and the data supplied to the credit reference agencies (where applicable).

[Note: paragraph 3.23f of DCG]

Outsourcing

SYSC 8.1 includes rules and guidance on outsourcing with which firms must or should comply as appropriate.

A firm seeking to instruct a third party to pursue the recovery of debts or to trace customers on its behalf should exercise due care in selecting the third party.

[Note: paragraph 2.5 of DCG]

A firm should take reasonable steps to seek to ensure that, where it has engaged a third party to recover debts on its behalf, the customer is not subject to multiple approaches by different persons, resulting in repetitive or frequent contact with the customer by different parties.

[Note: paragraph 3.7c of DCG]
Where a *firm* has engaged a third party to recover debts or to trace *customers* on its behalf, it should properly investigate complaints about the third party.

[Note: paragraph 2.5 of *DCG*]

**CONC 1.2.2 R** requires a *firm* to ensure its employees and agents comply with CONC and that it takes reasonable steps to ensure other *persons* who act on its behalf do so.

A *firm* must ensure that a third party engaged by it, where required, has the appropriate *Part 4A permission* to engage in the *regulated activities* undertaken in the course of the third party’s business.

[Note: paragraph 2.6 of *DCG*]
7.14 Settlements, disputed and deadlocked debt

Disputed debt

7.14.1 R

(1) A firm must suspend any steps it takes or its agent takes in the recovery of a debt from a customer where the customer disputes the debt on valid grounds or what may be valid grounds.

[Note: paragraph 3.9k of DCG]

(2) Paragraph (1) does not apply where a customer under a green deal consumer credit agreement (within the meaning of section 189B of the CCA) alleges that the disclosure and acknowledgement provisions in Part 7 of the Green Deal Framework (Disclosure, Acknowledgement, Redress etc) Regulations 2012 (SI 2012/2079) have been breached, but the lender reasonably believes this not to be the case.

7.14.2 G

Valid grounds for disputing a debt include that:

(1) the individual being pursued for the debt is not the true borrower or hirer under the agreement in question; or

(2) the debt does not exist; or

(3) the amount of the debt being pursued is incorrect.

[Note: annex A3 of DCG]

7.14.3 R

Where a customer disputes a debt on valid grounds or what may be valid grounds, the firm must investigate the dispute and provide details of the debt to the customer in a timely manner.

[Note: paragraph 3.9i of DCG]

7.14.4 R

Where there is a dispute as to the identity of the borrower or hirer or as to the amount of the debt, it is for the firm (and not the customer) to establish, as the case may be, that the customer is the correct person in relation to the debt or that the amount is the correct amount owed under the agreement.

[Note: paragraphs 3.9j of DCG and 7.11 (box) of ILG]
A firm must provide a customer with information on the outcome of its investigations into a debt which the customer disputed on valid grounds.

[Note: paragraph 3.3g of DCG]

Where a customer disputes a debt and the firm seeking to recover the debt is not the lender or the owner, the firm must:

1. pass the information provided by the customer to the lender or the owner; or

[Note: paragraph 3.23h of DCG]

2. if the firm has authority from the lender or owner to investigate a dispute, it must notify the lender or owner of the outcome of the investigation.

A debt repayment is deadlocked where the customer (or the customer’s representative) has acknowledged the customer’s liability for a debt and has proposed a repayment plan, but the proposed repayment plan is not acceptable to the firm seeking to recover the debt.

[Note: annex A4 of DCG]

A firm must give due consideration to a reasonable offer of repayment made by the customer or the customer’s representative.

[Note: annex A5 of DCG]

Where a firm rejects a proposal for repayment from a customer in default or in arrears difficulties or from the customer’s representative, the firm’s response must include a clear explanation of the reason for the rejection.

[Note: paragraph 7.16 (box) of ILG]

If a firm rejects a repayment offer because it is unacceptable, the firm must not engage in any conduct intended to, or likely to, have the effect of intimidating the customer into increasing the offer.

[Note: annex A5 of DCG]

Examples of conduct that may contravene would, depending on the circumstances, include where following an unacceptable offer a firm immediately:

1. sends field agents to visit the customer or communicates to the customer that it will do so;

[Note: annex A5 (box) to DCG]
(2) substantially increases the rate of interest or imposes a substantial charge or communicates that it will do either of those things.

7.14.12 [G]

In considering the customer's repayment offer, a firm should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

[Note: annex A6 of DCG]

7.14.13 [G]

(1) Merely making a counter-offer to a customer's repayment offer or merely taking steps to enforce an agreement would not contravene CONC 7.14.10 R.

(2) A firm which makes a counter offer to a proposal made by or on behalf of the customer, should allow the customer or the customer's representative, a reasonable period of time to consider and respond to the counter offer.

[Note: paragraph 7.16 of ILG]

7.14.14 [R]

If a firm accepts a customer's offer to settle a debt, it must communicate formally and unequivocally that the offer accompanied by the relevant payment has been accepted as settlement of the customer's liability.

[Note: paragraph 3.3h of DCG]
7.15 Statute barred debts

7.15.1 A debt is statute barred where the prescribed period within which a claim in relation to the debt may be brought expires. In England, Wales and Northern Ireland, the limitation period is generally six years in relation to debt. In Scotland, the prescriptive period is five years in relation to debt.

[Note: annex B1 of DCG]

7.15.2 In England, Wales and Northern Ireland, a statute barred debt still exists and is recoverable.

[Note: paragraph 3.15a and annex B3 of DCG]

7.15.3 In Scotland, a statute barred debt ceases to exist and is no longer recoverable if:

(1) a relevant claim on behalf of the lender or owner has not been made during the relevant limitation period; and

(2) the debt has not been acknowledged by, or on behalf of, the customer during the relevant limitation period.

[Note: annex B3 of DCG]

7.15.4 Notwithstanding that a debt may be recoverable, a firm must not attempt to recover a statute barred debt in England, Wales or Northern Ireland if the lender or owner has not been in contact with the customer during the limitation period.

[Note: paragraph 3.15b of DCG]

7.15.5 If the lender or owner has been in regular contact with the customer during the limitation period, the firm may continue to attempt to recover the debt.

[Note: paragraph 3.15b of DCG]

7.15.6 A firm must endeavour to ensure that it does not mislead a customer as to the customer’s rights and obligations.

[Note: paragraph 3.15b of DCG]
7.15.7 ❄ It is misleading for a firm to suggest or state that a customer may be the subject of court action for the sum of the statute barred debt when the firm knows, or reasonably ought to know, that the relevant limitation period has expired.

[Note: paragraph 3.15b of DCG]

7.15.8 ❄ A firm must not continue to demand payment from a customer after the customer has stated that he will not be paying the debt because it is statute barred.

[Note: paragraph 3.15b of DCG]

7.15.9 ❄ A firm must identify for prospective purchasers of debts arising under credit agreements or consumer hire agreements or P2P agreements those debts which it knows or ought reasonably to know are statute barred, so as to avoid a firm taking inappropriate action against customers in relation to such debts.

[Note: paragraph 3.23c of DCG]

Complaints to the Financial Ombudsman Service and initiating legal proceedings

7.15.10 ❄ A lender must not initiate legal proceedings in relation to a regulated credit agreement where the lender is aware that the customer has submitted a valid complaint or what appears to the firm may be a valid complaint relating to the agreement in question that is being considered by the Financial Ombudsman Service.

[Note: paragraph 7.9 (box) of ILG]
7.16 Passing data to lead generators etc.

7.16.1 A firm must not pass on a customer’s details to third parties, including lead generators, debt management firms, lenders, owners, debt collectors or credit brokers, unless it is appropriate to do so.

[Note: paragraph 3.9e of DCG]

7.16.2 [deleted]
7.17 Notice of sums in arrears under P2P agreements for fixed-sum credit

[Note: Until the end of 30 September 2014, transitional provisions apply to CONC 7.17: see CONC TP 4.3]

Application

(1) Subject to (2), this section does not apply where the P2P agreement provides for credit of less than £50.

(2) Paragraph (1) does not apply where two or more P2P agreements in relation to the same borrower (whether or not with the same lender) are entered into at or about the same time.

(3) Where (2) applies, the firm's obligations in CONC 7.17 apply as if all of the P2P agreements made with a borrower at or about the same time were a single agreement.

Notice of sums in arrears for fixed-sum credit

A firm must comply with this section where the following conditions are satisfied:

(1) a borrower is required to have made at least two payments under the agreement before that time;

(2) the total sum paid under the agreement by the borrower is less than the total sum required to have been paid before that time;

(3) the amount of the shortfall is no less than the sum of the last two payments which the borrower is required to have made before that time;

(4) the firm is not already under a duty to give the borrower notices under CONC 7.17.4 R in relation to the agreement;

(5) the lender is not already under a duty to give the borrower notice under section 86B of the CCA; and
7.17.4  
(1) The *firm* must, within the period of 14 days beginning with the day on which the conditions in 7.17.3 R are satisfied, give the *borrower* a notice including the information set out in 7.17.7 R and 7.17.8 R.

(2) After giving that notice, the *firm* must give the *borrower* further notices including the information in 7.17.7 R and 7.17.8 R at intervals of not more than six months.

7.17.5  
(1) The duty of the *firm* to give the *borrower* notices under 7.17.4 R will cease when either of the conditions mentioned in (2) is satisfied but, if either of those conditions is satisfied before the notice required by 7.17.4R (1) is given, the duty will not cease until that notice is given.

(2) The conditions referred to in (1) are:

(a) that the *borrower* ceases to be in arrears;

(b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the *borrower*.

(3) For the purposes of (2)(a) the *borrower* ceases to be in arrears when:

(a) no payments, which the *borrower* has ever failed to make under the agreement when required, are still owing;

(b) no default sum, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing;

(c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and

(d) no other sum of interest, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing.

(4) A *firm* must accompany the notice required by 7.17.4 R with a copy of the current arrears information sheet under section 86A of the CCA with the following modifications:

(-a) for the heading “Arrears” substitute “Arrears – peer-to-peer lending”;

(a) for the bullet point headed “Work out how much money you owe” substitute:

“Work out how much money you owe. To do this, you will need to make a list of all those you owe money to. A debt adviser can help you.”;

(b) for the bullet point headed “Contact the organisations you owe money to” substitute:
“Contact the peer-to-peer (P2P) platform which arranged your loan. Let them know you are having problems. They may be able to discuss options for paying back what you owe.”;

(c) For the paragraph headed “Doing nothing could make things worse.” substitute:

“Doing nothing could make things worse.

You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase.”.

(5) The firm must not charge the borrower a fee in connection with preparation of or the giving of the notice required by CONC 7.18.4 R.

7.17.6 In this section “payments” means payments to be made at predetermined intervals provided for under the terms of the agreement.

Content of arrears notices: fixed-sum credit

7.17.7 The notice required by CONC 7.17.4 R must contain the following information:

(1) a form of wording to the effect that the notice is given in compliance with the rules because the borrower is behind with the sums payable under the agreement;

(2) a form of wording encouraging the borrower to discuss the state of his account with the firm;

(3) the date of the notice;

(4) (a) the name, telephone number or numbers, the postal address, and, where appropriate, any other address of the firm; or

(b) where the firm and the borrower have entered into an arrangement under which the borrower has been given details of a particular employee or category of employee of the firm whom the borrower is entitled to contact for all the borrower’s dealings with the firm, the firm may, instead of including the telephone number or numbers in (a), refer to that arrangement;

(5) a description sufficient to identify any agreements and the opening balance under any agreements at the date on which the duty to give the notice arose;

(6) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:

“Default sums and interest
You may have to pay default sums and interest in relation to the missed or partly made payments referred to in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice. ; or

(b) in any other case, a statement in the following form:

"Default sums and interest
You will not incur any default sums or extra interest in relation to the missed or partly made payments referred to in this notice. This notice does not take account of any payments received after the date of the notice. ;

(7) a statement in the following form:

"Notices
For so long as you continue to be behind with your payments by any amount, you will be sent notices about this at least every six months. We are not required to send you notices more frequently than this, even if you get further behind with your payments in between notices. ; and

(8) a statement in the following form:

"Financial Conduct Authority Information Sheet
This notice should include a copy of the current arrears information sheet prepared by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example to think carefully before borrowing money to repay debts as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Financial Conduct Authority information sheet for more information about how to get advice on dealing with your debt. ."

Content of first required arrears notices

Where the notice is given under CONC 7.17.4R (1) the notice must also state the amount of the shortfall under the agreement which gave rise to the duty to give the notice and the firm must:

(1) within 15 working days of receiving the borrower's request for further information about the shortfall which gave rise to the duty to give the notice, give the borrower in relation to each of the sums which comprise the shortfall, notice of:

(a) the amount of the sums due which comprise the shortfall;
(b) the date on which the sums became due; and
(c) the amounts the borrower has paid in respect of the sums due and the dates of those payments;

(2) except where the original notice contained all the information specified in (1), include a statement in the following form

"If you want more information about which payments you failed to make please get in touch with us. We are required to give you this
information within fifteen working days of receiving your request for it."; and

(3) where the firm and the borrower have entered into an agreement to aggregate, the references to sums due and to amounts paid in (1) may be construed as a reference to the aggregated sums due to the firm (on behalf of the lender) and the aggregated amounts paid by the borrower in accordance with the terms of that agreement.

Content of required arrears notices except first required notices

Where the notice is given under CONC 7.17.4R (2) the notice must also contain the following information:

(1) that part of the opening balance referred to in CONC 7.17.7R (5) which comprises any sum which the borrower has failed to pay in full when it became due under the agreement, whether or not such sums have been included in a previous notice;

(2) the amount and date of any sums paid into the account by, or to the credit of, the borrower during the period to which the notice relates;

(3) the amount and date of any interest or other charges payable by the borrower which became due during the period to which the notice relates, whether or not the interest or other charges relate only to that period. But where the rate or rates of interest provided for under the agreement are not applicable on a per annum basis, this sub-paragraph does not require amounts and dates of interest which became due during the period to which the notice relates to be set out separately in the notice;

(4) the amount and date of any movement in the account during the period to which the notice relates which is not required to be included in the notice under (2) and (3);

(5) the balance under the agreement at the end of the period to which the notice relates;

(6) that part of the balance referred to in (5) which comprises any sum which the borrower has failed to pay in full when it became due under the agreement and which remains unpaid at the end of the period to which the notice relates, whether or not such a sum has been included in a previous notice; and

(7) add the following words to the end of the first sentence of the statement in CONC 7.17.7R (6)(a): "(in addition to any default sums and interest included in this notice)."

Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the firm must include wording explaining why it is not such a demand.
7.17.11 The reference to the account in CONC 7.17.9R (2) and CONC 7.17.9R (4) are to be construed as a reference to all accounts maintained by the firm (on behalf of a lender) which relate to the agreement with the borrower.
7.18 Notice of sums in arrears under P2P agreements for running-account credit

[Note: Until the end of 30 September 2014, transitional provisions apply to CONC 7.18: see CONC TP 4.4]

Application

7.18.1 This section applies to a firm with respect to operating an electronic system in relation to lending in relation to a borrower under a P2P agreement for running account credit.

Notice of sums in arrears for running account credit

7.18.2 A firm must comply with this section where the following conditions are satisfied:

(1) a borrower is required to have made at least two repayments under the agreement;

(2) the last two repayments which the borrower is required to have made before that time have not been made;

(3) the firm has not already been required to give a notice under CONC 7.18.3 R in relation to the agreement;

(4) the lender is not already under a duty to give the borrower notice under section 86C of the CCA; and

(5) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the borrower.

7.18.3 (1) The firm must, when the firm next sends a statement to the borrower, give or send the borrower a notice including the information set out in CONC 7.18.5 R.

(2) A firm must accompany the notice required by (1) with a copy of the current arrears information sheet under section 86A of the CCA with the following modifications:

(-a) for the heading “Arrears” substitute “Arrears – peer-to-peer lending”;
(a) for the bullet point headed “Work out how much money you owe” substitute:

“Work out how much money you owe. To do this, you will need to make a list of all those you owe money to. A debt adviser can help you.”

(b) for the bullet point headed “Contact the organisations you owe money to” substitute:

“Contact the peer-to-peer (P2P) platform which arranged your loan. Let them know you are having problems. They may be able to discuss options for paying back what you owe.”

(c) For the paragraph headed “Doing nothing could make things worse.” substitute:

“Doing nothing could make things worse. You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase.”

(3) The firm must not charge the borrower a fee in connection with the preparation of or the giving of the notice required by (1).

(4) The notice required by (1) may be incorporated in a statement or other notice which the firm gives to the borrower in relation to the agreement by virtue of FCA rules or the CCA.

In this section “payments” means payments to be made at predetermined intervals provided for under the terms of the agreement.

Content of arrears notices: running account credit

The notice referred to in CONC 7.18.3 R must contain the following information:

(1) a form of wording to the effect that it is given in compliance with the rules because the borrower is behind with his payments under the agreement;

(2) a form of wording encouraging the borrower to discuss the state of his account with the firm;

(3) the date of the notice;

(4) a description of the agreement sufficient to identify it;

(5) (a) the name, telephone number, postal address and, where appropriate, any other address of the firm; or

(b) where the firm and the borrower have entered into an arrangement under which the firm has given the borrower details of a particular employee or category of employee of the firm whom the borrower is entitled to contact for all his dealings with
the *firm*, the *firm* may, instead of including the telephone number or numbers referred to in (a), refer to that arrangement;

(6) in relation to each of the last two payments which the *borrower* is required under the agreement to have made and which have not been paid or not fully paid:

(a) the amount payable;

(b) the date on which that amount became due;

(c) in the event that the *borrower* has paid part of that amount, the amount the *borrower* has paid and the date on which that payment was made;

(d) the nature of the amount due; and

(e) the aggregate of the amounts payable as shown under (a), less the aggregate of the amounts paid as shown under (c);

(7) a statement in the following form:

"Missed and partly made payments

This notice does not give details of missed or partly made payments previously notified whether or not they remain unpaid."

(8) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:

"Default sums and Interest

You may have to pay default sums and interest in connection with the missed or partly made payments indicated above in addition to any default sums and interest already included in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice."; or

(b) in any other case, a statement in the following form:

"Default sums and Interest

You will not incur any default sums or extra interest in relation to the missed or partly made payments indicated above. This notice does not take account of any payments received after the date of the notice."; and

(9) a statement in the following form:

"Financial Conduct Authority Information Sheet

This notice should include a copy of the current arrears information sheet issued by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example, to think carefully before borrowing money to repay debts, as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the
Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the firm must include wording explaining why it is not such a demand.

(1) Subject to (2), where the total amount which the borrower has failed to pay in relation to the last two payments due under the agreement prior to the date on which the firm came under a duty to give the borrower a notice under [CONC 7.18.3 R is not more than £2, the notice:

- need not include any of the information or statements referred to in [CONC 7.18.4 R;]
- but, in that event, shall contain a statement in the following form:

"You have failed to make two minimum payments. Failing to make minimum payments can mean that you have broken the terms of this credit agreement. This could result in your having to pay additional costs. A copy of the Financial Conduct Authority Arrears information sheet is enclosed, which contains more information about what to do when you get behind with your payments."

(2) Paragraph (1) does not apply where at the date on which the duty to give notice arose a default sum or other charge has become payable as a result of the borrower’s failure to pay sums as set out in (1).
CONC 7 : Arrears, default and recovery (including repossessions)

Section 7.19 : Notice of default sums under P2P agreements

7.19 Notice of default sums under P2P agreements

[Note: Until the end of 30 September 2014, transitional provisions apply to CONC 7.19: see CONC TP 4.5]

Application

7.19.1 This section applies to a firm with respect to operating an electronic system in relation to lending in relation to a borrower under a P2P agreement.

7.19.2 (1) Subject to (2), this section does not apply where the P2P agreement provides for credit of less than £50.

(2) Paragraph (1) does not apply where two or more P2P agreements in relation to the same borrower (but whether or not with the same lender) are entered into at or about the same time.

(3) Where (2) applies, the firm's obligation in CONC 7.19.4 R applies as if all of the P2P agreements made with a borrower at or about the same time were a single agreement.

7.19.3 (1) In this section "default sum" means in relation to the borrower under a P2P agreement, a sum (other than a sum of interest) which is payable by the borrower under the agreement in connection with a breach of the agreement by the borrower.

(2) But a sum is not a default sum in relation to the borrower simply because as a consequence of the breach of the agreement the borrower is required to pay the sum earlier than would otherwise have been the case.

Notice of default sums

7.19.4 Where a default sum becomes payable under a P2P agreement by the borrower, the firm must give notice to the borrower within 35 days of a default sum becoming payable by the borrower.

7.19.5 The notice required by CONC 7.19.4 R must contain:

(1) a form of wording to the effect that it relates to default sums and is given in compliance with FCA rules;
(2) the date of the notice;

(3) a description of the agreement sufficient to identify it;

(4) the firm's name, telephone number, postal address and, where appropriate, any other address;

(5) the amount and nature of each default sum payable under the agreement which has not been the subject of a previous notice of default sums;

(6) the date upon which each default sum referred to in the notice became payable under the agreement;

(7) the following statement:

"This notice does not take account of default sums which we have already told you about in another default sum notice, whether or not those sums remain unpaid."; and

(8) the total amount of all the default sums included in the notice.
CONC 7 : Arrears, default and recovery (including repossessions)

Section 7.19 : Notice of default sums under P2P agreements
This chapter applies, unless otherwise stated in or in relation to a rule to every firm with respect to:

1. debt counselling;
2. debt adjusting; and
3. to the extent of giving the advice referred to in article 89A(2) of the Regulated Activities Order, providing credit information services.

CONC 8 covers all firms with respect to debt counselling, debt adjusting and providing credit information services, which includes profit-seeking as well as not-for-profit bodies which hold such permissions and in that case include those bodies with permission by virtue of article 62 of the Regulated Activities Order.

[Note: paragraph 1.10 of DMG]

CONC 8.10 (Conduct of business: providing credit information services) sets out that that section applies to every firm with respect to providing credit information services and with respect to operating an electronic system in relation to lending in relation to activities specified in article 36H(3)(e) to (h) of the Regulated Activities Order which are similar to providing credit information services.

CONC 8.3.1R(14) does not apply to a firm with respect to providing credit information services.

The activities of debt counselling and debt adjusting apply to credit agreements and consumer hire agreements whether they are regulated or not.
8.2 Conduct standards: debt advice

Overarching principles

8.2.1 The Principles for Businesses (PRIN) apply as a whole to firms with respect to debt counselling, debt adjusting and providing credit information services.

8.2.2 (1) One aspect of conducting a firm’s business with due skill, care and diligence under Principle 2 is that a firm should ensure that it gives appropriate advice to customers residing in the different countries of the UK. Failure to pay proper regard to the differences in options for debt solutions available to those customers and to the differences in enforcement actions and procedures is likely to contravene Principle 2 and may contravene other Principles.

[Note: paragraph 3.23d of DMG]

(2) Recommending a debt solution which a firm knows, believes or ought to suspect is unaffordable for the customer is likely to contravene Principle 2, Principle 6 and Principle 9 and may contravene other Principles. The firm should also take into account the expected term of the proposed debt solution, having regard to the Principles.

[Note: paragraph 3.26j of DMG]

(3) An example of behaviour that is likely to contravene Principle 6 and may contravene other Principles in this field is for a firm to actively discourage a customer from considering alternative sources of debt counselling.

[Note: paragraph 3.23m of DMG]

8.2.3 A firm covered by CONC 8 has obligations under the FCA’s Dispute Resolution: Complaints sourcebook (DISP) to treat complainants fairly; these are set out in DISP 1.

Signposting to sources of free debt counselling, etc

8.2.4 A debt management firm must prominently include:

(1) in its first written or oral communication with the customer a statement that free debt counselling, debt adjusting and providing of credit information services is available to customers and that the customer can find out more by contacting the Money Advice Service; and
(2) on its web-site the following link to the Money Advice Service web-site (https://www.moneyadviceservice.org.uk/en/tools/debt-advice-locator).

[Note: paragraph 1.7 of Debt Management Protocol]

Dealing with lenders of customers

8.2.5 A firm’s communications to lenders (or to lenders’ representatives) on behalf of its customers must be transparent so as to ensure a firm’s customer’s interests are not adversely affected.

[Note: paragraph 2.5 of DMG]

8.2.6 Where entry into a debt solution will lead to a period when payments to lenders (in part or in whole) are not made or are retained by the firm, the firm must, as soon as possible after the customer enters into the debt solution, notify the customer’s lenders of the reason payments are not to be made to the lender and the period during which that will be the case.

[Note: paragraph 3.18niv of DMG]

Vulnerable customers

8.2.7 A firm must establish and implement clear and effective policies and procedures to identify particularly vulnerable customers and to deal with such customers appropriately.

[Note: paragraph 2.4 of DMG]

8.2.8 Most customers seeking advice on their debts under credit agreements or consumer hire agreements may be regarded as vulnerable to some degree by virtue of their financial circumstances. Of these customers some may be particularly vulnerable because they are less able to deal with lenders or debt collectors pursuing them for debts owed. Customers with mental health and mental capacity issues may fall into this category.

[Note: paragraph 2.4 of DMG]
8.3 Pre contract information and advice requirements

8.3.1 A firm must (except where the contract is a credit agreement to which the disclosure regulations apply) provide sufficient information, in a durable medium, when the customer first enquires about the firm’s services, about the following matters to enable the customer to make a reasonable decision:

1. the nature of the firm’s service offered in the contract to the customer;
   [Note: paragraph 3.38b of DMG]

2. the duration of the contract;
   [Note: paragraph 3.38c of DMG]

3. the total cost of the firm’s service or, where it is not possible to state the total cost, the formula the firm uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;
   [Note: paragraph 3.40c of DMG]

4. any fee or deposit, such as an arrangement fee, a periodic fee, a management fee, or an administrative fee;
   [Note: paragraph 3.38c of DMG]

5. any fee or charge which can be imposed on the customer in relation to cancellation of the contract;
   [Note: paragraph 3.38c of DMG]

6. any other costs likely to be incurred under the contract and the circumstances in which these would be payable;
   [Note: paragraph 3.38c of DMG]

7. where the firm bases its fees or charges on some percentage or an hourly rate or some other formula, an explanation of how the fees or charges are calculated;
   [Note: paragraph 3.9c of DMG]

8. the elements of the service that the fees cover;
R8.3.2

A firm must ensure that:

(1) all advice given and action taken by the firm or its agent or its appointed representative:

(a) has regard to the best interests of the customer;

(b) is appropriate to the individual circumstances of the customer;

and

(c) is based on a sufficiently full assessment of the financial circumstances of the customer;

[Note: paragraph 2.6a of DMG]

(2) customers receive sufficient information about the available options identified as suitable for the customers' needs; and

[Note: paragraph 2.6b of DMG]

(3) it explains the reasons why the firm considers the available options suitable and other options unsuitable.

[Note: paragraph 2.6b of DMG]
Firms are reminded of PERG 12.6G which contains guidance on the regulated activity of advising on conversion or transfer of pension benefits.

The individual circumstances of the customer include, for example, the customer's financial position, the country in the UK to whose laws and procedures the customer and the lender in question are subject, and the level of understanding of the customer.

[Note: paragraph 2.6c of DMG]

A firm must ensure that advice provided to a customer, whether before the firm has entered into contract with the customer or after, is provided in a durable medium and:

(1) makes clear which debts will be included in any debt solution and which debts will be excluded from any debt solution;

[Note: paragraph 3.38j of DMG]

(2) makes clear the actual or potential advantages, disadvantages, costs and risks of each option available to the customer, with any conditions that apply for entry into each option and which debts may be covered by each option;

[Note: paragraphs 3.23a and 3.38b of DMG]

(3) warns the customer:

(a) of the actual or potential consequences of failing to continue to pay taxes, fines, child support payments and debts which could result in loss of access to essential goods or services or repossession of, or eviction from, the customer’s home;

[Note: paragraph 3.38m of DMG]

(b) of the actual or potential consequences of not continuing to make repayments under credit agreements or consumer hire agreements;

[Note: paragraph 3.26k of DMG]

(c) of the actual or potential consequences of ignoring correspondence or other contact from lenders and those acting on behalf of lenders;

[Note: paragraph 3.38n of DMG]

(d) that action to recover debts may be commenced, which may involve further cost to the customer; and

[Note: paragraph 3.38q of DMG]

(e) that by entering into a debt management plan or another non-statutory repayment plan there is no guarantee that any current recovery or legal action will be suspended or withdrawn;

[Note: paragraph 3.38r of DMG]
(4) where relevant to the *debt solution*, makes clear the risks, including the following risks:

(a) if the arrangement or deed fails, the risk of bankruptcy;

(b) homeowners may need to release equity from the value of their homes to pay off debts; and that a remortgage may attract higher interest rates or that if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;

(c) there are restrictions on the expenditure of a *person* who enters into an individual voluntary arrangement or protected trust deed;

(d) the *customer’s lenders* may not approve the individual voluntary arrangement or protected trust deed; and

(e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding;

[Note: paragraph 3.38s of DMG]

(5) takes proper account of the individual needs of, and any requests made by, a *customer*; and

[Note: paragraph 3.23f of DMG]

(6) where relevant, explains the nature of an insolvency procedure and the role of the *firm*.

[Note: paragraphs 3.23 and 3.38 of DMG]

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**8.3.4A**

(1) If a *firm* has not entered into a contract with a *customer*, and is satisfied on reasonable grounds that it is unlikely to do so, **CONC 8.3.4R** applies in relation to that *customer* as if the words “is provided in a *durable medium* and” were omitted.

(2) The *firm* must keep a record of the grounds in (1).

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**8.3.5**

The information required by **CONC 8.3.4 R** should be provided leaving sufficient time for the *customer* (taking into account the complexity of the information and the *customer’s* financial position) to consider it before having to make a decision on the appropriate course of action.

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**8.3.6**

A *firm* should not unfairly incentivise debt advisers (whether employees, agents or *appointed representatives* of the *firm*) to the extent that an incentive might lead the *firm* not to comply with **CONC 8.3.2 R**.

[Note: paragraph 3.22 (box) of DMG]

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**8.3.6A**

(1) *Firms* must provide advice in a *durable medium*, unless **CONC 8.3.4AR** applies. Where questions over the application of that exemption may arise, for example, in relation to advice given to a *customer* at an
initial meeting or telephone call, the following considerations may be relevant:

(a) if a firm never charges for advice and never enters into contracts with customers for debt solutions, CONC 8.3.4AR may remove the requirement to provide advice to the customer in a durable medium; and

(b) if a firm enters into contracts with customers (in relation to advice, to a debt solution, or to some other matter), it will need to consider, at the early stages of contact with a customer, whether a contract with that customer may follow. A firm is only likely to be able to satisfy itself on that point once discussions with a customer have advanced to a stage where it is reasonable to conclude that it is more likely than not that the firm will not enter into a contract with the customer. The firm should keep a record of its reasons for being satisfied on the point.

(2) Where the exemption in CONC 8.3.4AR applies, the firm should consider whether it may nevertheless be appropriate to comply with CONC 8.3.4R in certain cases, for example where complex advice is given.

8.3.7 R A firm must:

(1) provide the customer with a source of impartial information on the range of debt solutions available to the customer in the relevant country of the UK;

[Note: paragraph 3.23b of DMG]

(2) before giving any advice or any recommendation on a particular course of action in relation to the customer's debts, carry out a reasonable and reliable assessment of:

(a) the customer's financial position (including the customer's income, capital and expenditure);

(b) the customer's personal circumstances (including the reasons for the financial difficulty, whether it is temporary or longer term and whether the customer has entered into a debt solution previously and, if it failed, the reason for its failure); and

(c) any other relevant factors (including any known or reasonably foreseeable changes in the customer's circumstances such as a change in employment status);

[Note: paragraph 3.23c of DMG]

(3) refer a customer to an appropriate not-for-profit debt advice body in circumstances where the customer:

(a) has problems related to debt requiring immediate attention with which the firm is unable or unwilling to assist the customer; or

[Note: paragraph 3.23gi of DMG]

(b) does not have enough disposable income to pay the firm's fees;

[Note: paragraph 3.23gii of DMG]
(4) refer a customer to, or provide contact details for, another debt advice provider in circumstances where the firm is unable to provide appropriate advice or provide an appropriate debt solution for the customer; and

[Note: paragraph 3.23h of DMG]

(5) seek to ensure that a customer understands the options available and the implications and consequences for the customer of the firm’s recommended course of action.

[Note: paragraph 3.23i of DMG]

(1) The information and advice referred to in Section 8.3 should be provided in a manner which is clear, fair and not misleading to comply with Principle 7 and Section 3.3.1 R, and should be in plain and intelligible language in accordance with Section 3.3.2 R. A firm should encourage a customer to read the information and allow sufficient time between providing the information and entering into the contract to enable the customer to seek independent advice if so desired.

[Note: paragraphs 3.21, 3.35 and 3.36 of DMG]

(2) The firm’s services referred to in Section 8.3 include any debt solution the firm offers to a customer. Therefore, in setting out fees or charges for a firm’s services, the fees and charges the firm charges in relation to a debt solution should be included.

(3) The serious problems related to debt in Section 8.3.7 R are likely to include, where non-payment of a debt may result in the loss of a customer’s home or loss of access to essential goods or services and, in particular, where legal action is threatened or legal action is taken in relation to debts which may have that effect.

[Note: paragraph 3.23gi of DMG]

(4) A not-for-profit debt advice body should refer a customer to another not-for-profit debt advice body under Section 8.3.7 R (3) where, for example, it is unable to assist a customer.

(5) An appropriate not-for-profit debt advice body would be one that provides the most appropriate debt solution given the customer’s financial circumstances.
8.4 Debt solution contracts

8.4.1 A firm must provide a customer with a written contract setting out its terms and conditions for the provision of its services.

[Note: paragraph 3.40a of DMG]

8.4.2 A firm must include in its written contract (other than a credit agreement to which the Consumer Credit (Agreements) Regulations 2010 apply) the following matters:

(1) the nature of the service to be provided by the firm, including the specific debt solution to be offered to the customer;

[Note: paragraph 3.40b of DMG]

(2) the duration of the contract;

[Note: paragraph 3.40c of DMG]

(3) the total cost of the firm’s service or, where it is not possible to state the total cost, the formula the firm uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;

[Note: paragraph 3.40c of DMG]

(4) the circumstances in which a customer may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the customer may be required to pay in that case; and

[Note: paragraph 3.40d of DMG]

(5) set out the duration and conditions for exercise of any right to cancel that may apply and any fees or charges the customer may be required to pay.

[Note: paragraph 3.40e of DMG]

8.4.3 A firm must not include the following terms in a contract with a customer:

(1) a term requiring the customer to sign a declaration stating in any way that the customer understands the requirements of the contract;

[Note: paragraph 3.41a of DMG]
(2) a term restricting or prohibiting the customer from corresponding with or responding to a lender or with any person acting on behalf of a lender;

[Note: paragraph 3.41b of DMG]

(3) a term which states or implies the firm has no liability to the customer; or

[Note: paragraph 3.41c of DMG]

(4) a term which states or implies that there are no circumstances in which a customer is entitled to a refund.

[Note: paragraph 3.41d of DMG]

8.4.4 A firm may be required to make a refund of its fees and charges, in whole or in part, if a firm fails to deliver its service in whole or in part or it has carried out the service without reasonable care and skill.
8.5 Financial statements and debt repayment offers

8.5.1 A firm must ensure that a financial statement sent to a lender on behalf of a customer:

(1) is accurate and realistic and must present a sufficiently clear and complete account of the customer’s income and expenditure, debts and the availability of surplus income;

[Note: paragraph 3.24 of DMG]

(2) state any fees or charges being made by the firm;

(3) is sent only after having obtained the customer’s consent to send the statement and the customer’s confirmation as to the accuracy of the statement;

[Note: paragraph 3.26f and g of DMG]

(4) is provided to the customer’s lenders as soon as practicable after the customer has confirmed its accuracy; and

[Note: paragraph 3.26e of DMG]

(5) is also sent to the customer, together with any accompanying correspondence.

[Note: paragraph 3.26h of DMG]

8.5.2 The format of the financial statement sent to lenders on behalf of the customer should be uniform and logically structured in a way that encourages consistent responses from lenders and reduces queries and delays. Firms may wish to use the Common Financial Statement facilitated by the Money Advice Trust or an equivalent or similar statement.

[Note: paragraph 3.24 of DMG]

8.5.3 (1) Where a firm makes an offer to a lender to repay a customer’s debts on behalf of a customer, the offer should be realistic, sustainable and in accordance with CONC 8.3.2 R should, in particular, have regard to the best interests of the customer.
(2) A sustainable offer should enable the customer to meet repayments in full when they are due out of the customer's disposable income for the whole duration of the repayment proposal.

(3) Setting the offer should take full account of a customer's obligations to pay taxes, fines, child support payments and those debts which could result in loss of access to essential goods or services or repossession of, or eviction from, the customer's home.

(4) In considering what are essential goods and services, the firm should consider the customer's personal circumstances, for example, for disabled persons debts for telecommunications services are likely to be essential.

[Note: paragraphs 3.25, 3.26c and 3.28d of DMG]

8.5.4 A firm must:

(1) take reasonable steps to verify the customer's identity, income and outgoings;

[Note: paragraph 3.26a of DMG]

(2) seek explanations if a customer indicates expenditure which is particularly high or low; and

[Note: paragraph 3.26b of DMG]

(3) where applicable, notify a customer that a particular lender will not deal with the firm (for whatever reason), as soon as possible after the firm becomes aware that the customer owes a debt to that lender.

[Note: paragraph 3.26l of DMG]

8.5.5 What are reasonable steps for verification of the identity, income and outgoings of a customer depends on the circumstances of the case and the type of service offered by the firm. Estimates of expenditure would be reasonable where precise figures are not readily available. The Common Financial Statement includes expenditure guidelines, but where a firm uses the Common Financial Statement or an equivalent or similar statement which includes such guidelines, the use of expenditure guidelines needs to take into account the individual circumstances of the customer.

Note: paragraph 3.26a (box) of DMG]
8.6 Changes to contractual payments

R8.6.1 Where a firm gives advice to a customer not to make a contractual repayment or to cancel any means of making such a repayment before any debt solution is agreed or entered into, the firm must be able to demonstrate the advice is in the customer’s best interests.

(2) Where a firm gives advice of the type in (1), the firm must advise the customer (C) that if C adopts the advice C should notify C’s lenders without delay and explain that C is following the firm’s advice to this effect.

[Note: paragraph 3.27 of DMG]

R8.6.2 If the effect of advice the firm gives (if adopted by the customer) is that contractual repayments are not made or are not made in full (for one or more repayments), the firm must warn the customer of the actual or potential consequences of taking that course of action.

[Note: paragraph 3.28a of DMG]

R8.6.3 A firm must only advise a customer to make repayments at a rate lower than the rate necessary to meet interest and charges accruing where it is in the customer’s best interests.

[Note: paragraph 3.28b of DMG]

G8.6.4 (1) The FCA expects it will generally be in the customer’s best interests to maintain regular payments to lenders (even if the repayment is less than the full sum due).

(2) An example where it might be in the customer’s best interests not to repay at the rate necessary to meet interest and charges accruing is where there is insufficient disposable income to meet essential expenditure of the type referred to in ■ CONC 8.5.3 G. Where that is the case, the firm should explain clearly to the customer why this course of action is necessary and the consequences of the course of action.

R8.6.5 Where a firm has advised a customer not to make contractual repayments (in full or in part) or to cancel the means of making such payments or not to make repayments necessary to meet interest and charges accruing, the firm must advise the customer if it becomes clear that that course of action is not
producing effects in the customer's best interests to enable the customer to take action in the customer's best interests.

Note: paragraph 3.28c of DMG]

8.6.6 (1) An example of an effect not in the customer's best interests would be if a lender does not agree to stop applying interest and charges to the customer's debt.

[Note: paragraph 3.28c of DMG]

(2) Where it becomes clear that the course of action in CONC 8.6.5 R is not producing effects in the customer's best interests the firm should, where withdrawing from the debt management plan may be in the customer's best interests, advise the customer of the possibility of withdrawing from the plan.
8.7 Charging for debt counselling, debt advice and related services

8.7.1 (1) The distance marketing rules in CONC 2.6, including the right to cancel in CONC 11, apply to firms with respect to distance contracts which are credit agreements, consumer hire agreements and agreements the subject matter of which comprises, or relates to, debt counselling, debt adjusting, providing credit information services and providing credit references. CONC 11 excludes various credit agreements from the right to cancel.

(2) Where a consumer uses the right to cancel under CONC 11 or under the Financial Services (Distance Marketing) Regulations 2004 to cancel an agreement with a firm to set up or administer a debt solution, the firm should refund any sum paid, less a charge that the firm is entitled to make under CONC 11.1.1 R or regulation 13(6) to (9) of those Regulations.

[Note: paragraphs 3.29 and 3.31 of DMG]

(3) The firm may be entitled to impose a charge in (2) if the customer requested the firm to begin to carry out its service within the cancellation period (see CONC 11.1.1 R or regulation 10 of the Financial Services (Distance Marketing) Regulations 2004).

8.7.2 A firm must ensure that the obligations of the customer in relation to the amount, or the timing of payment, of its fees or charges:

(1) do not have the effect that the customer pays all, or substantially all, of those fees in priority to making repayments to lenders in accordance with the debt management plan; and

(2) do not undermine the customer’s ability to make (through the firm acting on the customer’s behalf) significant repayments to the customer’s lenders throughout the duration of the debt management plan, starting with the first month of the plan; but

(3) paragraphs (1) and (2) do not prevent, to the extent the firm complies with all applicable rules, a firm operating a full and final settlement model, in which the firm holds money on behalf of the customer and does not distribute that money promptly, pending negotiating a settlement with the customer’s lenders.

[Note: paragraphs 5.3 and 5.4 of the Debt Management Protocol]
(1) For the purposes of CONC 8.7.2R (2), an obligation is likely to be viewed as undermining the customer’s ability to make significant repayments to the customer’s lenders if it has the effect that the firm may allocate more than half of the sums received from the customer in any one-month period from the start of the debt management plan to the discharge (in whole or in part) of its fees or charges.

(2) Once the customer has paid any initial fee for the arrangement and preparation of the debt management plan, or, if earlier, once six months from the start of the plan have elapsed, the FCA would expect there usually to be a reduction in the proportion of the sums received from the customer that the firm allocates to the discharge of its fees and charges.

(3) A firm should spread any charges or fees payable by the customer for the administration or operation of the debt management plan following its making evenly over the duration of the plan.

(4) The proportion of the sums received from a customer in order to discharge the firm’s fees or charges should take account of the level of repayments the customer makes.

A firm must:

(1) in good time before entering into a contract with the customer, disclose the existence of any commission or incentive payments relevant to the service provided to the customer between the firm and any third party and at any time, if the customer requests, disclose the amount of any such commission or incentive payment;

[Note: paragraph 3.34b and c of DMG]

(2) send a revised financial statement in the same format as that required under CONC 8.5.1 R to the customer’s lenders where the firm’s fees or charges alter during an arrangement and would affect the amount available for distribution to lenders;

[Note: paragraph 3.34f (box) of DMG]

(3) at the earlier of, where the firm identifies or it is established that advice provided by the firm to the customer was incorrect or was not appropriate to the customer, refund or credit to the customer’s account fees or charges imposed for that advice;

[Note: paragraph 3.34m of DMG]

(4) make an appropriate refund of fees or charges paid where the whole or any part of the service as agreed with the customer has not been provided or not provided with a reasonable standard of skill and care.

[Note: paragraph 3.34o of DMG]

A firm, in presenting its fees, costs and charges, should distinguish the fees payable for the firm’s services from any charges payable for court proceedings or other insolvency proceedings.
A firm must not:

(1) without a reasonable justification, switch a customer from one debt solution to another while making a further charge for setting up or administering the new debt solution to the extent that some or all of that work has already been carried out by the firm;

[Note: paragraphs 3.32 and 34k of DMG]

(2) switch a customer to a different debt solution, without obtaining the customer’s consent after having fully explained to the customer the reason for the change;

[Note: paragraph 3.34l of DMG]

(3) require or take any payment from a customer before the firm has entered into contract with the customer concerning a debt solution;

[Note: paragraph 3.34d of DMG]

(4) request any payment from a customer’s payment account, unless the customer has specifically authorised the firm to do so and has not cancelled that authorisation;

[Note: paragraph 3.34d (box) of DMG]

(5) accept payment for fees or charges by credit card or another form of credit (excluding a payment where the firm does not know and cannot be expected to know that the customer’s current account is in debit or would be taken into debit by the payment);

[Note: paragraph 3.34e of DMG]

(6) impose cancellation charges that are unreasonable or disproportionate when compared to the actual costs necessarily incurred by the firm in reasonably providing its service;

[Note: paragraph 3.34h of DMG]

(7) claim a fee or charge from a customer or take payment from a customer’s account which is not provided for in the agreement with the customer, or where it is provided for but is, or is likely to be, unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (for contracts entered into before 1 October 2015) or the Consumer Rights Act 2015;

[Note: paragraph 3.34i of DMG]

(8) where the firm identifies that advice provided by the firm to the customer was incorrect or was not appropriate to the customer, charge an additional fee for further or revised advice; or

[Note: paragraph 3.34m of DMG]
(9) request, suggest or instruct *customers* seeking to recover refunds of fees from the *firm* to make contact with the *firm* on a premium rate telephone number.

[Note: paragraph 3.34n of *DMG*]

8.7.7 R *Firms* should note the effect of the *call charges rule* in [GEN 7].
8.8 Debt management plans

8.8.1 A firm in relation to a customer with whom it has entered into a debt management plan must:

(1) maintain contact with the customer;
   [Note: paragraph 3.44 of DMG]

(2) regularly monitor and review the financial position and circumstances of the customer;
   [Note: paragraph 3.44 of DMG]

(3) adapt the debt management plan to take into account relevant changes in the financial position and circumstances of the customer;
   [Note: paragraph 3.44 of DMG]

(4) inform the customer without delay of the outcome of negotiations with lenders, in particular, where the lender has:
   (a) refused to deal with the firm; or
   (b) returned payments to the firm; or
   (c) refused the debt repayment offer; or
   (d) refused to freeze interest or charges accruing;
   [Note: paragraph 3.45a of DMG]

(5) inform the customer of any material developments about the relationship between the customer and the customer's lenders;
   [Note: paragraph 3.45b of DMG]

(6) provide the customer with copies of correspondence or documentation relating to material developments relevant to the relationship between the customer and the customer's lenders;
   [Note: paragraph 3.45b of DMG]

(7) where the firm makes repayments on behalf of the customer:
   (a) monitor the customer's repayments for evidence which suggests a change in the customer's financial circumstances;
   (b) review, and amend or terminate, where appropriate, the customer's debt management plan at the earlier of:
(i) each anniversary of entering into the plan; or
(ii) as soon as the firm becomes aware of a material change in the customer's circumstances; and
(c) inform the customer of the outcome of any reassessment;

[Note: paragraph 3.45c of DMG]

(8) provide a statement to the customer at the start of the debt management plan, and at least annually or at the customer's reasonable request, setting out:

(a) a balance showing the amount owed by the customer, including any interest charges at the beginning of the statement period;
(b) fees, charges and other costs applied over the period of the statement, including any upfront fee or deposit, such as an initial arrangement fee, an arrangement fee, any periodic or management or administrative fee, any cancellation fee and any other costs incurred under the contract;
(c) a narrative explaining the type of fee applied, how the fee is calculated and to what it applies;
(d) the duration or estimated duration of the contract;
(e) the total cost of the firm's service over the duration or estimated duration of the contract; and
(f) monthly or other periodic payments made to lenders;

[Note: paragraphs 3.45cde of DMG]

(9) maintain adequate records relating to each debt management plan which the firm has administered for the customer until the contract between the customer and the firm is completed or terminated;

[Note: paragraph 3.45i of DMG]

(10) check the accuracy of the details of the customer's accounts; and

[Note: paragraph 3.45j of DMG]

(11) use reasonable endeavours not to send inaccurate information to lenders.

[Note: paragraph 3.45j of DMG]

(1) Evidence that there may have been a material change in a customer's financial circumstances is likely to include where a customer who has not previously missed payments under a debt management plan misses such payments.

[Note: paragraph 3.45ci of DMG]

(2) Where the firm informs a customer of the outcome of a review of a debt management plan, it should seek to discuss with the customer any changes to the plan or to the firm's service at the earliest reasonably opportunity.
(3) In CONC 8.8.1R (6) correspondence or documentation relating to material developments would include, for example, the issue or threat of issue of default notices or legal proceedings.

[Note: paragraph 3.45b of DMG]
8.9 Lead generators: including firm responsibility in dealing with lead generators

8.9.1 **G** The Principles (in particular Principle 6 and Principle 7) apply to actions of a firm dealing with a customer who has been referred to it through a lead generator. For example, where a firm acts on a sales lead and knows or ought to know that the lead generator is using misleading information, advice or actions to obtain a customer’s personal data is likely to amount to a breach by the firm of Principle 6 and Principle 7.

8.9.2 **R** A firm must take reasonable steps before entering into an agreement to accept sales leads from a lead generator for debt counselling or debt adjusting or providing credit information services to ensure:

1. that any of the lead generator’s advice, any content of its website and advertising and any of its commercial practices comply with applicable legal requirements, including the Consumer Protection from Unfair Trading Regulations 2008;
2. that the lead generator is registered with the Information Commissioner’s Office under data protection legislation; and
3. that the lead generator has processes in place to ensure it complies with that Act and with the Privacy and Electronic Communications (EC Directive) Regulations 2003.

[Note: paragraph 3.9 of DMG]

8.9.3 **G** The steps required to satisfy the requirement in 8.9.2 R should depend upon the regularity with which the firm intends to accept sales leads from the lead generator. If sales leads provided by a lead generator are likely to be on a single or occasional basis, less rigorous checks should be required than for a specialist sales lead generator.

[Note: paragraph 3.9 (box) of DMG]

8.9.4 **R** A firm must take reasonable steps, where it has agreed to accept sales leads from a lead generator for debt counselling or debt adjusting or providing credit information services, to ensure that the lead generator:

1. where it does not have a Part 4A permission for debt counselling and is not an appointed representative of a firm with such permission,
does not carry on debt counselling in obtaining or passing on sales leads to the firm;

(2) where it carries on debt counselling, has and continues to have a Part 4A permission for debt counselling or is an appointed representative of a firm with such permission;

(3) where it does not have a Part 4A permission covering the relevant activity, does not claim to or imply that it provides debt counselling or debt adjusting or that it is providing credit information services;

[Note: paragraph 3.12 of DMG]

(4) complies with applicable legal requirements, including the Consumer Protection from Unfair Trading Regulations 2008 in relation to any of its advice, any content of its website, any of its advertising and any of its commercial practices;

[Note: paragraph 3.9a DMG]

(5) makes the true nature of its services clear to customers, through any means of communication or promotion it uses;

[Note: paragraph 3.12 of DMG]

(6) where it seeks a customer’s personal data to pass on to a firm for a fee, it makes clear to the customer that the customer’s personal data will be passed on to the firm;

[Note: paragraph 3.12c of DMG]

(7) makes clear to a customer any financial interest it has in passing on a sales lead to the firm;

[Note: paragraph 3.12d of DMG]

(8) makes clear, if asked by a customer, the nature of its relationship with the firm;

[Note: paragraph 3.12e of DMG]

(9) does not falsely claim or imply in any way that it is or represents a charitable or not-for-profit body or government or local government organisation;

[Note: paragraph 3.12f of DMG]

(10) communicates with customers consistent with, and promotes, services the firm is able to provide;

[Note: paragraph 3.12h of DMG]

(11) complies with the Privacy and Electronic Communications (EC Directive) Regulations 2003 and data protection legislation;

[Note: paragraph 3.11 of DMG]
(12) does not send, or cause to be sent, an electronic communication to a customer (C) unless C has previously notified the lead generator that C consents for the time being to such communications being sent or caused to be sent by the lead generator;

[Note: paragraph 3.12j of DMG]

(13) does not make or cause to be made by means of an automated calling system (which is capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system, and transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called) a call to a customer (C), unless C has previously notified the caller that for the time being C consents to such communications being made by or caused to be made by the caller on the line in question; and

[Note: paragraph 3.12j of DMG]

(14) enables customers to cancel using a clear and easy method their consent to be called or sent any communication.

[Note: paragraph 3.12m of DMG]

[Note: paragraphs 3.7 and 3.8 of DMG]

Guidance for firms

8.9.5 The FCA would expect firms that agree with lead generators to accept sales leads in relation to debt counselling or debt adjusting to be able to identify, upon request, all the lead generators from which they have received leads (with the FCA authorisation number, where applicable).

8.9.6 Claiming or implying a person is or represents, for example, a charitable organisation is likely to include operating a website which looks like, or is designed to look like, the website of such an organisation.

8.9.7 In complying with CONC 8.9.4 R a firm that agrees with a lead generator to accept sale leads should:

1. check with the Information Commissioner’s Office that the lead generator is appropriately registered under data protection legislation; and

2. check the lead generator’s Privacy and Electronic Communications (EC Directive) Regulations 2003 process documentation.
8.10 Conduct of business: providing credit information services

Application

8.10.1 This section applies to:

(1) a firm with respect to providing credit information services in relation to information relevant to the financial standing of an individual;

(2) a firm with respect to the activities set out in article 36H(3)(e) to (h) of the Regulated Activities Order (Operating an electronic system in relation to lending) in relation to a borrower under a P2P agreement.

Conduct

8.10.2 The Principles apply to a firm with respect to providing credit information services. A firm providing such services should, for example, set out clearly in any communication to a customer the extent of the service it is able to offer.

[Note: paragraph 3.46 of DMG]

8.10.3 A firm must not:

(1) claim to be able to remove negative but accurate information from a customer’s credit file, including entries concerning adverse credit information and court judgments; or

[Note: paragraph 3.47ai of DMG]

(2) mislead a customer about the length of time that negative information is held on the customer’s credit file or any official register; or

[Note: paragraph 3.47aii of DMG]

(3) claim that a new credit file can be created, such as by the customer changing address.

[Note: paragraph 3.47aiii of DMG]

8.10.4 It is likely to be a contravention of the Principles, for example Principles 6 and Principle 7, where a firm:
(1) claims in a communication to a customer to be able to remove negative but accurate entries from a customer's credit file, but where the customer enquires about this service the customer is offered instead the firm's service as a lender or a credit broker; or

(2) fails to inform a customer that a credit reference agency will not respond to the firm taking steps in relation to the customer's credit file and will only send the customer's credit file to the customer.

[Note: paragraphs 3.47cd of DMG]
Chapter 10

Prudential rules for debt management firms
10.1 Application and purpose

Application

10.1.1 This chapter applies to:

(1) a debt management firm; and

(2) a not-for-profit debt advice body that, at any point in the last 12 months, has held £1 million or more in client money or as the case may be, projects that it will hold £1 million or more in client money at any point in the next 12 months.

Application: professional firms

10.1.2 (1) This chapter does not apply to an authorised professional firm:

(a) whose main business is the practice of its profession; and

(b) whose regulated activities covered by this chapter are incidental to its main business.

(2) A firm’s main business is the practice of its profession if the proportion of income it derives from professional fees is, during its annual accounting period, at least 50% of the firm’s total income (a temporary variation of not more than 5% may be disregarded for this purpose).

(3) Professional fees are fees, commissions and other receipts receivable in respect of legal, accountancy, conveyancing and surveying services provided to clients but excluding any items receivable in respect of regulated activities.

Purpose

10.1.3 This chapter builds on the threshold condition referred to at §COND 2.4 (Appropriate resources) by providing that a firm must meet, on a continuing basis, a basic solvency requirement. This chapter also builds on Principle 4 which requires a firm to maintain adequate financial resources by setting out prudential requirements for a firm according to what type of firm it is.

10.1.4 Prudential standards have an important role in minimising the risk of harm to customers by ensuring that a firm behaves prudently in monitoring and managing business and financial risks.
10.1.5 More generally, having adequate prudential resources gives the firm a degree of resilience and some indication to customers of creditworthiness, substance and the commitment of its owners. Prudential standards aim to ensure that a firm has prudential resources which can provide cover for operational and compliance failures and pay redress, as well as reducing the possibility of a shortfall in funds and providing a cushion against disruption if the firm ceases to trade.

10.1.6 A contravention of the rules in this chapter does not give rise to a right of action by a private person under section 138D of the Act (and each of those rules is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).
10.2 Prudential resources requirements

General solvency requirement

10.2.1 A firm must, at all times, ensure that it is able to meet its liabilities as they fall due.

General prudential resource requirement

10.2.2 A firm must ensure that, at all times, its prudential resources are not less than its prudential resources requirement.

Prudential resources: relevant accounting principles

10.2.3 A firm must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its annual financial statements unless a rule requires otherwise.

Prudential resources requirement: firms carrying on other regulated activities

10.2.4 The prudential resources requirement for a firm carrying on a regulated activity or activities in addition to those covered by this chapter, is the higher of:

1. the requirement which is applied by this chapter; and
2. the prudential resources requirement which is applied by another rule or requirement to the firm.

Prudential resources requirement

10.2.5 On its accounting reference date in each year, a firm must calculate:

1. the total value of its relevant debts under management outstanding on that date; and
2. the sum of:
   (a) 0.25% of the first £5 million of that total value;
   (b) 0.15% of the next £95 million of that total value; and
   (c) 0.05% of any remaining total value.
10.2.6 R The total value of a firm's relevant debts under management outstanding referred to in R10.2.5 R (1) is the sum of all the firm's customers' relevant debts under management.

10.2.7 G The definition of relevant debts under management refers to a debt due under a credit agreement or a consumer hire agreement in relation to which the firm is carrying on debt adjusting or an activity connected to that activity. The reference to "debt due" covers not only amounts that are payable at the time the prudential resources requirement is calculated but also amounts the borrower or hirer is presently obliged to pay under the credit agreement or the consumer hire agreement in the future.

10.2.8 R The prudential resources requirement for a firm to which this chapter applies is the higher of:

(1) £5,000; or

(2) the sum calculated in accordance with R10.2.5 R (2);

for the period until (subject to R10.2.13 R) its next accounting reference date.

10.2.9 R To determine a firm's prudential resources requirement for the period beginning on the date on which it obtains Part 4A permission and ending on the day before its next accounting reference date, the firm must carry out the calculation in R10.2.5 R (2) on the basis of the total value of relevant debts under management the firm projects will be outstanding on the day before its next accounting reference date.

What is not included as relevant debts under management

10.2.10 G Activities carried on by a person acting as an insolvency practitioner (within section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989) or by a person acting in reasonable contemplation of that person's appointment as an insolvency practitioner are excluded from the regulated activity of debt adjusting. A debt in relation to which a person is acting in such a capacity is, therefore, excluded from the calculation of its relevant debts under management (but a debt in relation to which the same person is not acting in such capacity and is carrying on debt-adjusting is included in the calculation).

Determining the prudential resources requirement

10.2.11 G If a firm has 1000 relevant debts under management and each of those debts is £10,000, the total value of the firm's relevant debts under management is £10,000,000. If the firm does not carry on any other regulated activity to which another higher prudential resources requirement applies, its prudential resources requirement is £20,000. This is calculated as follows:

(1) 0.25% x £5,000,000 = £12,500; and

(2) 0.15% x £5,000,000 = £7,500.
If during the following year 20% (£200) of each relevant debt under management is paid off by the borrower or hirer leaving an outstanding balance of £800 on each relevant debt under management, and during that year the firm does not carry on debt adjusting in relation to any further debts due under credit agreements or consumer hire agreements, the total value of the firm’s relevant debt under management is £8,000,000. If the firm does not carry on any other regulated activity to which another higher prudential resources requirement applies, its prudential resources requirement is £17,000. This is calculated as follows:

(1) 0.25% x £5,000,000 = £12,500; and

(2) 0.15% x £3,000,000 = £4,500.

Recalculating the prudential resources requirement

If a firm experiences a greater than 15% increase in the total value of its relevant debts under management compared to the value used in its last prudential resources requirement calculation, it must recalculate its prudential resources requirement using the new total value of its relevant debts under management.

A firm must notify the FCA of any change in its prudential resources requirement within 14 days of that change.
10.3 Calculation of prudential resources

10.3.1 A firm must calculate its prudential resources only from the items which are eligible to contribute to a firm’s prudential resources (see CONC 10.3.2 R).

10.3.2 In arriving at its calculation of its prudential resources a firm must deduct certain items (see CONC 10.3.3 R).

Table: Items which are eligible to contribute to the prudential resources of a firm

<table>
<thead>
<tr>
<th>Item</th>
<th>Additional explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Share capital</td>
<td>This must be fully paid and may include:</td>
</tr>
<tr>
<td></td>
<td>(1) ordinary share capital; or</td>
</tr>
<tr>
<td></td>
<td>(2) preference share capital (excluding preference shares redeemable by shareholders within two years).</td>
</tr>
</tbody>
</table>
| 2 Capital other than share capital | The capital of a sole trader is the net balance on the firm’s capital account and current account. The capital of a partnership is the capital made up of the partners:
| | (1) capital account, that is the account:
| | (a) into which capital contributed by the partners is paid; and |
| | (b) from which, under the terms of the partnership agreement, an amount representing capital may be withdrawn by a partner only if:
| | (i) he ceases to be a partner and an equal amount is transferred to another such account by his former partners or any person replacing him as their partner; or |
| | (ii) he ceases to be a partner and an equal amount is transferred to another such account by his former partners or any person replacing him as their partner; or |
| | (iii) the partnership is otherwise dissolved or wound up; and |
| | (2) current accounts according to the most recent financial statement. |

For the purpose of the calculation of capital resources in respect of a defined benefit occupational pension scheme:
(1) a firm must derecognise any defined benefit asset;
(2) a firm may substitute for a defined benefit liability the firm's deficit reduction amount, provided that the election is applied consistently in respect of any one financial year.

3 Reserves
These are, subject to Note 1, the audited accumulated profits retained by the firm (after deduction of tax, dividends and proprietors’ or partners’ drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a parent undertaking.

For the purposes of calculating capital resources, a firm must make the following adjustments to its reserves, where appropriate:

(1) a firm must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;
(2) a firm must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
(3) in respect of a defined benefit occupational pension scheme:
   (a) a firm must derecognise any defined benefit asset;
   (b) a firm may substitute for a defined benefit liability the firm's deficit reduction amount, provided that the election is applied consistently in respect of any one financial year.

4 Interim net profits
If a firm seeks to include interim net profits in the calculation of its capital resources, the profits have, subject to Note 1, to be verified by the firm’s external auditor, net of tax, anticipated dividends or proprietors’ drawings and other appropriations.

5 Revaluation reserves
Subordinated loans/debts must be included in capital on the basis of the provisions in this chapter that apply to subordinated loans/debts.

Note:
1 Reserves must be audited and interim net profits, general and collective provisions must be verified by the firm’s external auditor unless the firm is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemptions from audit)) or, where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts.

Table: Items which must be deducted in arriving at prudential resources

<table>
<thead>
<tr>
<th></th>
<th>Investments in own shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Investments in subsidiaries (Note 1)</td>
</tr>
<tr>
<td>2</td>
<td>Intangible assets (Note 2)</td>
</tr>
</tbody>
</table>
4 Interim net losses (Note 3)
5 Excess of drawings over profits for a sole trader or a partnership (Note 3)

Notes
1 Investments in subsidiaries are the full balance sheet value.
2 Intangible assets are the full balance sheet value of goodwill, capitalised development costs, brand names, trademarks and similar rights and licences.
3 The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the period following the date as at which the capital resources are being computed.

[Note: Until 31 March 2017, transitional provisions apply to CONC 10.3.3 R: see CONC TP 5.1]

Subordinated loans/debt

A subordinated loan/debt must not form part of the prudential resources of the firm unless it meets the following conditions:

(1) it has an original maturity of:
   (a) at least five years; or
   (b) it is subject to five years’ notice of repayment;

(2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;

(3) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding up of the firm;

(4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated loan/debt must be limited to petitioning for the winding up of the firm or proving the debt and claiming in the liquidation of the firm;

(5) the subordinated loan/debt must not become due and payable before its stated final maturity date, except on an event of default complying with (3);

(6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;

(7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the firm against subordinated amounts owed to them by the firm;

(8) the terms of the subordinated loan/debt must be set out in a written agreement that contains terms that provide for the conditions set out in this rule; and

(9) the loan/debt must be unsecured and fully paid up.
When calculating its prudential resources, the firm must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

\[ a - b \]

where:

- \( a \) = Items 1 - 5 in the Table of items which are eligible to contribute to a firm's prudential resources (see CONC 10.3.2 R)
- \( b \) = Items 1 - 5 in the Table of items which must be deducted in arriving at a firm's prudential resources (see CONC 10.3.3 R)

\[ \text{Note: Until 31 March 2017, transitional provisions apply to CONC 10.3.5 R: see CONC TP 5.2} \]

CONC 10.3.6

CONC 10.3.5 R can be illustrated by the examples set out below:

1. Share Capital £20,000
   Reserves £30,000
   Subordinated loans/debts £10,000
   Intangible assets £10,000

   As subordinated loans/debts (£10,000) are less than the total of share capital + reserves - intangible assets (£40,000) the firm need not exclude any of its subordinated loans/debts pursuant to CONC 10.3.5 R. Therefore total prudential resources will be £50,000.

2. Share Capital £20,000
   Reserves £30,000
   Subordinated loans/debts £60,000
   Intangible assets £10,000

   As subordinated loans/debts (£60,000) exceed the total of share capital + reserves - intangible assets (£40,000) by £20,000, the firm should exclude £20,000 of its subordinated loans/debts when calculating its prudential resources. Therefore total prudential resources will be £80,000.

\[ \text{Note: Until 31 March 2017, transitional provisions apply to CONC 10.3.6 G: see CONC TP 5.3} \]
Chapter 11
Cancellation
11.1 The right to cancel

11.1.1 Except as provided for in CONC 11.1.2 R or where PROF 5.4.1 R (1) or PROF 5.4.1 R (2) applies, a consumer has a right to cancel a distance contract without penalty and without giving any reason, within 14 calendar days where that contract is:

(1) a credit agreement;

(2) an agreement between a consumer and a firm the subject matter of which comprises or relates to credit broking, debt counselling, debt adjusting, providing credit information services or providing credit references, other than an agreement that relates to any of those activities in relation to a consumer hire agreement.

[Note: article 6(1) of the Distance Marketing Directive in relation to distance contracts that are consumer credit agreements]

11.1.2 (1) For a credit agreement there is no right to cancel under CONC 11.1.1 R, unless (2) or (3) applies, in respect of:

(a) a regulated consumer credit agreement (within the meaning of that section) to which section 66A (right to withdraw) of the CCA applies;

(b) a credit agreement under which a lender provides credit to a consumer and where the consumer’s obligation to repay is secured by a legal mortgage on land;

(c) a credit agreement cancelled under regulation 15(1) of the Consumer Protection (Distance Selling) Regulations 2000 (automatic cancellation of a related credit agreement) or under regulation 38 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (effects of withdrawal or cancellation on ancillary contracts);

(d) a credit agreement cancelled under regulation 23 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (automatic termination of credit agreement); and

(e) a restricted-use credit agreement to finance the purchase of land or an existing building, or an agreement for a bridging loan in connection with the purchase of land or an existing building.

(2) There is a right to cancel under CONC 11.1.1 R where the lender has not complied with CONC 2.7.6 R (requirement to communicate terms and conditions etc), unless the distance contract falls with the exception in CONC 2.7.12 R and the firm has complied with the requirements of that rule.
### CONC 11 : Cancellation

**Section 11.1 : The right to cancel**

(3) There is a right to cancel under CONC 11.1.1 R where the circumstances in CONC 2.7.12 R apply but the lender has not supplied all the contractual terms and conditions and information as required in CONC 2.7.12 R.

(4) In the case of a *distance contract* comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the right to cancel under CONC 11.1.1R applies only to the initial service agreement.

*[Note: article 1(2) of the Distance Marketing Directive]*

(5) In this rule:

(a) “initial service agreement” includes the opening of a bank account or the making of a *credit-token agreement*; and

(b) “operations” includes the deposit or withdrawal of funds to or from a bank account and payments by a credit card or store card.

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#### 11.1.3

Section 66A of the CCA (right to withdraw) does not apply to an agreement for credit exceeding £60,260 (unless the agreement is a *residential renovation agreement*), an agreement secured on land, a *restricted-use credit agreement* to finance the purchase of land or an agreement for a bridging loan in connection with the purchase of land. Section 67 of the CCA (cancellable agreements) applies to regulated credit agreements (apart from agreements secured on land, restricted-use credit agreements to finance the purchase of land or agreements for a bridging loan in connection with the purchase of land and agreements covered by section 66A) and *consumer hire agreements* (to which this section does not apply) in the circumstances specified in the section. A *customer* with a right to cancel under section 67 of the CCA may choose to cancel the agreement under that section or under CONC 11.1.1 R.

#### 11.1.4

A *firm* may provide longer or additional cancellation rights voluntarily but, if it does, these should be on terms at least as favourable to the *customer* as those in this chapter, unless the differences are clearly explained.

### Beginning of cancellation period

#### 11.1.5

The cancellation period begins:

(1) either from the day the *distance contract* is made; or

(2) from the day on which the *consumer* receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under CONC 2.7.6 R or under CONC 2.7.12 R, if that is later than the date referred to in (1) above.

*[Note: article 6(1) of the Distance Marketing Directive in relation to distance contracts]*
CONC 11 : Cancellation

Section 11.1 : The right to cancel

Disclosing the right to cancel

11.1.6 R  (1) The firm must disclose to a consumer in good time before or, if that is not possible, immediately after the consumer is bound by a contract to which the right to cancel applies under CONC 11.1 R, and in a durable medium, the existence of the right to cancel, its duration and the conditions for exercising it including information on the amount which the consumer may be required to pay, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which the notification of cancellation should be sent.

(2) This rule applies only where a consumer would not otherwise receive the information in (1) under a rule in this sourcebook from the firm (such as under CONC 2.7.2 R to CONC 2.7.5 R (the distance marketing disclosure rules)).

Exercising the right to cancel

11.1.7 R If a consumer exercises the right to cancel the consumer must, before the expiry of the cancellation period, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a durable medium available and accessible to the recipient, is dispatched before the cancellation period expires.

[Note: article 6(6) of the Distance Marketing Directive for distance contracts]

11.1.8 G The firm should accept any indication that the consumer wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the firm should treat the date cited by the consumer as the date when the notification was dispatched.

Record keeping

11.1.9 R The firm must make adequate records concerning the exercise of a right to cancel and retain them for at least three years.

Effects of cancellation

11.1.10 R By exercising a right to cancel, a consumer withdraws from the contract and the contract is terminated.

11.1.11 R  (1) When a consumer exercises the right to cancel the consumer may only be required to pay, without any undue delay, for the service actually provided by the firm in accordance with the contract. The amount payable must not:

(a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;

(b) in any case be such that it could be construed as a penalty.

[Note: article 7(1), (2) and (3) of the Distance Marketing Directive in relation to distance contracts]
(2) The firm may not require a consumer to pay any amount on the basis of this rule unless it can prove that the consumer was duly informed about the amount payable and, in conformity with the distance marketing disclosure rules (CONC 2.7.2 R to CONC 2.7.5 R). However, in no case may the firm require such payment if it has commenced the performance of the contract before expiry of the cancellation period without the consumer’s prior request.

[Note: article 7(1), (2) and (3) of the Distance Marketing Directive in relation to distance contracts]

**Firm’s obligations on cancellation**

11.1.12 The firm must, without undue delay and within 30 calendar days, return to the consumer any sums it has received from the consumer except for any amount that the consumer may be required to pay under CONC 11.1.11 R. This period begins from the day on which the firm receives the notification of cancellation.

[Note: article 7(1), (2) and (3) of the Distance Marketing Directive in relation to distance contracts]

**Consumer’s obligations on cancellation**

11.1.13 The firm is entitled to receive from the consumer any sums or property the consumer has received from the firm without any undue delay and no later than within 30 calendar days. This period begins from the day on which the consumer dispatches the notification of cancellation.

[Note: article 7(5) of the Distance Marketing Directive in relation to distance contracts]

11.1.14 Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.
11.2 Right of withdrawal: P2P agreements

[Note: Until the end of 30 September 2014, transitional provisions apply to CONC 11.2: see CONC TP 4.6]

Application

11.2.1 This section applies to a firm with respect to operating an electronic system in relation to lending in relation to a borrower under a P2P agreement.

11.2.2 This section does not apply to a P2P agreement under which credit exceeding £60,260 is, was or would be provided unless the agreement is a residential renovation agreement.

Right to cancel

11.2.3 A firm must ensure that a P2P agreement that the firm makes available to a borrower and a lender provides for the following contractual rights and obligations and procedure for and effect of the exercise of those rights and obligations:

(1) a right for the borrower:
   (a) to withdraw from the agreement (“the right of withdrawal”);
   (b) without giving any reason; and
   (c) by giving oral or written notice of the withdrawal to the firm (on behalf of the lender) before the end of the period of 14 days:
      (i) beginning with the day after the P2P agreement is made; or
      (ii) beginning with the day on which the borrower receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under CONC 4.3, if that is later than the date in (1);

(2) where written notice is given of the right of withdrawal by electronic means:
   (a) it may be sent to the number or electronic address specified for the purpose in the agreement; and
   (b) where it is so sent, it is to be regarded as having been received by the firm (on behalf of the lender) at the time it is sent;

(3) where written notice is given of the right of withdrawal, other than by electronic means:
(a) it may be sent by post to, or left at, the postal address specified for the purpose in the agreement; and

(b) where it is sent by post to that address, it is to be regarded as having been received by the firm (on behalf of the lender) at the time of posting;

(4) where the borrower exercises the right of withdrawal from a P2P agreement:

(a) the borrower must repay to the firm (on behalf of the lender) or the lender any credit provided and the interest accrued on it (at the rate provided for under the agreement); but

(b) the borrower is not liable to pay to the firm (on behalf of the lender) or the lender any compensation, fees or charges, except any non-returnable charges paid by the lender or by the firm (on behalf of the lender) to a public administrative body;

(5) the effect of exercising the right to withdraw is that the obligations of the borrower under the agreement cease to have effect except for the obligation in (4); and

(6) where an amount is payable where (4) applies, the agreement may provide that the amount must be paid without undue delay and no later than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period the agreement may provide that the sum may be recovered from the borrower as a debt).

A firm must ensure that a P2P agreement that it makes available to a lender and a borrower does not provide for any other obligations of the borrower in connection with the exercise of the rights in CONC 11.2.3 R.
Chapter 12

Requirements for firms with interim permission for credit-related regulated activities
12.1 Application and purpose

12.1.1 This chapter applies to a firm with an interim permission.

12.1.2 The purpose of these rules is to provide that certain provisions of the Handbook or of a Regulatory Guide:

1. that would otherwise apply to persons with an interim permission are not to apply; or
2. are to apply to those persons with the modifications specified in the table in CONC 12.1.4 R.

Disapplication or modification of certain modules or provisions of the Handbook

12.1.3 The modules or parts of the modules of the appropriate regulator’s Handbook of rules and guidance or of a Regulatory Guide listed in the table in CONC 12.1.4 R to this chapter:

1. do not apply, to the extent set out in the table, to a person with an interim permission with respect to the carrying on of a credit-related regulated activity or operating an electronic system in relation to lending; or
2. are to apply to such a person with respect to the carrying on of a credit-related regulated activity or operating an electronic system in relation to lending with the modifications specified in the table in CONC 12.1.4 R.

12.1.4 Table: Disapplied or modified modules or provisions of the Handbook

<table>
<thead>
<tr>
<th>Module</th>
<th>Disapplication or modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management Arrangements, Systems and Control sourcebook (SYSC) [FCA]</td>
<td>SYSC 6.1.4C R (requirement of debt management firm or credit repair firm to appoint a compliance officer) does not apply to a firm with an interim permission.</td>
</tr>
<tr>
<td></td>
<td>SYSC 6.3.8 R (responsibility for anti-money laundering systems and controls) does not apply to a firm with only an interim permission.</td>
</tr>
<tr>
<td></td>
<td>SYSC 6.3.9 R (requirement to appoint a money laundering reporting officer) does not apply to a firm with only an interim permission.</td>
</tr>
</tbody>
</table>
CONC 12 : Requirements for firms with interim permission for credit-related regulated activities...

<table>
<thead>
<tr>
<th>Module</th>
<th>Disapplication or modification</th>
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</thead>
<tbody>
<tr>
<td>Fees manual (FEES)</td>
<td>The Fees manual does not apply in respect of the fee provided for in FEES 8.1.1R (1), except for the rules and guidance in FEES 2.3 and FEES 8.1.</td>
</tr>
<tr>
<td>Threshold Conditions (COND)</td>
<td>Guidance applies with necessary modifications to reflect Chapter 4 of Part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (see Note 1).</td>
</tr>
<tr>
<td>Client Assets (CASS)</td>
<td>CASS does not apply with respect to credit-related regulated activity to a firm with:</td>
</tr>
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<td></td>
<td>(1) only an interim permission; or</td>
</tr>
<tr>
<td></td>
<td>(2) an interim permission that is treated as a variation of permission;</td>
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<tr>
<td></td>
<td>if the firm acts in accordance with the provisions of paragraphs 3.42 and 3.43 of the Debt management (and credit repair services) guidance (OFT366rev) previously issued by the Office of Fair Trading, as they were in effect immediately before 1 April 2014.</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>SUP 3 (Auditors), SUP 10A (FCA Approved persons), SUP 10C (FCA senior managers regime for approved persons in SMCR firms) and SUP 12 (Appointed representatives) (see Note 2) do not apply:</td>
</tr>
</tbody>
</table>
Module | Disapplication or modification
--- | ---
(1) to a firm with only an interim permission; or

(2) with respect to a credit-related regulated activity or operating an electronic system in relation to lending for which a firm has an interim permission that is treated as a variation of permission,

except that SUP 3.10 and SUP 3.11 apply to a firm in relation to its designated investment business that comprises operating an electronic system in relation to lending.

Note 2 A firm may not be a principal in relation to a regulated activity for which it has interim permission. A firm with interim permission may, however, be an appointed representative in relation to a regulated activity which it does not have interim permission to carry on (article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).

SUP 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements) applies:

(1) with necessary modifications to reflect Chapter 4 of Part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (see Note 3);

(2) with the modifications to SUP 6.3.15D and SUP 6.4.5D set out in paragraph 1.2 of this Schedule.

Note 3 If a firm with interim permission applies to the appropriate regulator under section 55A of the Act for Part 4A permission to carry on a regulated activity or under section 55H or 55I of the Act to vary a Part 4A permission that the firm has otherwise than by virtue of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 by adding a regulated activity to those to which the permission relates, the application may be treated by the appropriate regulator as relating also to some or all of the regulated activities for which the firm has interim permission.

SUP 11 (Controllers and close links) does not apply to a firm with only an interim permission (see Note 4).

Note 4 A firm is not to be regarded as an authorised person for the purposes of Part 12 of the Act (control over authorised persons) if it has only an interim permission (see article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).

For a firm with only an interim permission

(1) SUP 15.5.1 R, SUP 15.5.2 G, SUP 15.5.4 R, SUP 15.5.5 R are modified so that the words "reasonable advance", *and the date on which the firm intends to implement...
<table>
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**firms with interim permission for credit-related regulated...**

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<th><strong>Module</strong></th>
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</tr>
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</table>
| CONC 10 : Prudential requirements for debt management firms | (1) **to a firm with only an interim permission; or**

(2) **with respect to credit-related regulated activity or operating an electronic system in relation to lending for which a firm has an interim permission that is treated as a variation of permission.**

**Consequences**

**Perimeter Guidance**

For a **firm only with an interim permission,** **PERG 5.11.13 G is modified so that following the words "which does not otherwise consist of carrying on regulated activities" is added "(other than a regulated activity carried on by a firm only with an interim permission listed in article 59A of the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(No.2) Order 2013 [SI 2013/1881]) which is to be disregarded for this purpose)."**

Article 59A enables a **firm with only an interim permission which would be able to benefit from article 728 of**
CONC 12 : Requirements for firms with interim permission for credit-related regulated...

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<td>the Regulated Activities Order, but for carrying on the new consumer credit regulated activities to continue to do so.</td>
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</tbody>
</table>

**Interpretation**

In this section 12.1, the expression "interim permission" means a permission which a person is to be treated as having under article 56(9)(a) or (b) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013.
Chapter 13

Guidance on the duty to give information under sections 77, 78 and 79 of the Consumer Credit Act 1974
13.1 Application

This chapter:

(1) applies to a firm with respect to consumer credit lending and a firm with respect to consumer hiring;

(2) does not apply to the obligation in or under section 78(4), (4A) or (5) of the CCA on a lender to give regular statements where running-account credit is provided under a regulated credit agreement.

Guidance

(1) The FCA takes the view that sections 77, 78 and 79 of the CCA should be read in a way that allows the borrower or hirer to obtain the information needed in order to be properly informed without imposing unnecessary burden on firms.

(2) The statement referred to in the relevant section must be prepared according to the information to which it is 'practicable' for the firm to refer. In the FCA's view, this means practicable at the time of the request and includes information which can reasonably be obtained from third parties.

(3) Firms should take steps to ensure that information is preserved and kept available to be used to give information to a borrower or hirer.

The request and the duty to give

(1) A request must be from or on behalf of the borrower under sections 77 and 78 or from or on behalf of a hirer under section 79. This would include a friend or relative, a solicitor, a claims management company or other third party. Under data protection legislation, the lender or owner is not allowed to reveal such information to a third party without the authority of the borrower or hirer. It should therefore satisfy itself that the person making the request has proper authority to obtain the information. If a copy of such authority is not enclosed with the request, the lender or owner is entitled to reply by asking to see the authority.

(2) Where there are two or more borrowers or hirers and the request comes from one only, it must be nevertheless complied with, and the response must be given to both (or all) borrowers or hirers.
(3) If the recipient considers that another person is the lender or owner, the recipient should either inform the applicant of who it considers is the correct recipient or pass the request on to that person.

(4) In accordance with the sections referred to in (1) the firm must 'give' a copy of the executed agreement and any other document referred to in it and the required statement. In the FCA's view, sending a copy of them by ordinary second class post will suffice. Guidance on what constitutes a copy is given below and found in the case of Carey v HSBC Bank plc [2009] EWHC 3417 (QB).

(5) The duty under the relevant section does not apply if no sum is, or will or may become, payable by the borrower or hirer under the agreement. This is irrespective of whether the agreement may have been terminated.

### The copy agreement

13.1.4

(1) The copy of the executed agreement should be a 'true copy' of the original. However, as confirmed in the case of Carey v HSBC Bank plc [2009] EWHC 3417 (QB), in this context the term 'true copy' does not necessarily mean a carbon, photocopy, microfiche copy or other exact copy of the signed agreement. There is no obligation to provide a copy which includes a copy of the signature.

(2) The firm can reconstitute a copy. It can do this by re-populating a template of the relevant agreement form with the details of the specific agreement taken from its records. If the firm does provide a reconstituted copy, it should explain that that is what it has done, to avoid misleading the customer that this is a contemporaneous copy.

(3) The terms and conditions should be those applicable at the time the agreement was executed. The name and address at the time of execution must be included.

(4) The reconstituted agreement should contain a heading prescribed by the CCA and any relevant cancellation notice.

(5) If the reason why no copy is given in response to a request under these sections is that there never was an executed agreement, the firm should acknowledge this in its response.

(6) If the agreement has been varied, the duty is to provide not only a copy of the agreement as originally executed but also either:

   (a) a copy of the latest variation given in accordance with section 82(1) of the CCA relating to each discrete term of the agreement which has been varied; or,

   (b) a clear statement of the terms of the agreement as varied.

(7) Further, section 180(1)(b) of the CCA and regulation 3(2) of the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 expressly allow certain matters to be omitted from the copy. There may be excluded from the copy of the executed agreement to be provided under these sections:

   (a) any information relating to the borrower, hirer or surety, or information included for the use of the lender or owner only,
which is not required to be included by the CCA or by any regulations made under the CCA as to the form and content of the agreement;

(b) any signature box, signature or date of signature;

(c) in the case of pawn agreements, any description of the article taken in pawn.

13.5 The statement of account

If the firm possesses insufficient information to enable it to ascertain the amount and date of any sum which is to become payable, it is sufficient to indicate the basis on which they would fall to be ascertained.

13.6 Failure to comply

(1) Failure to comply with the provisions means that the agreement becomes unenforceable while the failure to comply persists, and the courts have no discretion to allow enforcement.

(2) In such cases, a firm should in no way, either by act or omission, mislead a customer as to the enforseability of the agreement.

(3) In particular, a firm should not in such cases either threaten court action or other enforcement of the debt or imply that the debt is enforceable when it is not.

(4) The firm should, in any request for payment or communication relating to a payment (other than a statement issued in accordance with the CCA or regulations made under it which does not constitute or contain a request for payment) in such cases, make clear to the customer that although the debt remains outstanding it is unenforceable.

(5) In the judgment of McGuffick -v- The Royal Bank of Scotland plc [2009] EWHC 2386 (Comm) Flaux J held in a case under section 77 of the CCA that passing details of a debt to a credit reference agency and related activities do not constitute enforcement under the CCA. He also held that steps taken with a view to enforcement, including demanding payment from a claimant, issuing a default notice, threatening legal action and the actual bringing of proceedings, are not themselves ‘enforcement’ under the CCA. On the other hand he confirmed that the actions listed under sections 76(1) and 87(1) of the CCA did amount to enforcement notwithstanding that some of the actions ‘less obviously’ amounted to enforcement. These actions are demanding earlier payment, recovering possession of goods or land, treating any right conferred on the debtor by the agreement as terminated, restricted or deferred, enforcing any security and terminating the agreement.

(6) While Flaux J agreed with the decision of HHJ Simon Brown QC (sitting as a Deputy High Court Judge) in Tesco Personal Finance v Rankine [2009] C.C.L.R. 3 that commencing proceedings was not enforcement, but a step taken with a view to enforcement, both he and HHJ Simon Brown appear to have been drawing a distinction between commencing proceedings and entering judgment in those proceedings.

(7) This guidance deals only with the question of whether an agreement is unenforceable in relation to sections 77, 78 and 79 of the CCA. A
lender's rights to enforce an agreement may be restricted for a variety of reasons, by the Act, by or under the CCA and by virtue of the general law.

(8) However, where a firm is aware that an agreement is unenforceable because of non-compliance with an information request under section 77, 78 or 79 of the CCA, a firm should make it clear when communicating to a customer about a debt that the debt is in fact unenforceable. Failure to do so, in that case, would in the FCA’s view unfairly mislead the customer by omission. Any communication that implies expressly or otherwise that a debt is enforceable when it is known that it is not, would be misleading. One way to avoid this would be for the firm to explain to the customer the full meaning of 'unenforceable'. 
CONC 13 : Guidance on the duty
to give information under
sections 77, 78 and 79 of the...
Chapter 14

Requirement in relation to agents
14.1 Application

This chapter applies to a firm with respect to a credit-related regulated activity.

Requirements

A firm must not appoint an individual, who is not an authorised person or an exempt person, to act as an agent of the firm, in carrying on regulated activities of the firm unless all of the following conditions are met at the date of the individual’s appointment and while the individual continues to act as the firm’s agent:

1. the firm appoints the individual as the firm’s agent;
2. the individual works as agent only for the firm and not as agent for any other principal;
3. the firm has a written contract with the individual which:
   (a) sets out effective measures for the firm to control the individual’s activities when acting on its behalf in the course of its business; and
   (b) requires the individual to make clear to customers that the individual is representing the firm as the individual’s principal and the name of the firm;
4. (in the case of collecting debts) receipt of repayments by the individual is treated as receipt by the firm; and
5. the firm accepts full responsibility for the conduct of the individual when the individual is acting on the firm’s behalf in the course of the firm’s business.

14.1.3 G

1. A firm in CONC 14.1.2 R would need to have a Part 4A permission for every activity the individual carries on as its agent for which the firm would need permission if it were carrying on the activity itself.

2. CONC 14 uses the expression “individual” in its natural meaning as referring to a single human being.

14.1.4 R

Where a firm appoints an agent in accordance with CONC 14.1.2 R to carry on the business of the firm:
(1) the *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the agent with the *firm's* obligations under the *regulatory system*; and

(2) the *firm* must take all reasonable steps to identify conflicts of interest between the agent and a *client* of the *firm* that arise or may arise in the course of the *firm* carrying on *regulated activities or ancillary activities*. 
15.1 Application

This chapter applies to:

1. a firm with respect to consumer credit lending in relation to regulated credit agreements secured on land; and

2. a firm with respect to credit broking in relation to credit agreements secured on land.

Firms which carry on consumer credit lending or credit broking should comply with all rules which apply to that regulated activity in CONC and other parts of the Handbook. For example, CONC 7 applies to matters concerning arrears, default and recovery (including repossession) and applies generally, including to agreements to which this chapter applies. This chapter sets out specific additional requirements and guidance that apply in relation to credit agreements secured on land (see CONC 1.2.7G). Certain arranging and introducing activities in relation to investment property loans (as defined by article 61A of the Regulated Activities Order), regulated mortgage contracts and home purchase plans are excluded, to the extent specified in article 36E of the Regulated Activities Order, from credit broking.

Conduct

The financial promotion rules in CONC 3 apply to firms’ financial promotions concerning credit agreements secured on land, apart from the extent to which a financial promotion or communication concerns qualifying credit. CONC 3.3.1 R requires financial promotions to be clear fair and not misleading; firms should take particular care with respect to explaining the nature of the credit to be provided and the costs of borrowing.

A firm must make clear in advance the purpose of any visit off trade premises (which has the same meaning as in section 48 of the CCA) at which the customer may enter into a regulated credit agreement.

In good time before a credit agreement is made and, where section 58 applies, before an unexecuted agreement is sent to the customer for signature a firm must:

1. disclose key contract terms and conditions of the prospective credit agreement;
(2) disclose any features of the prospective credit agreement which carry a particular risk to the customer;

(3) inform the customer of the consequences of missing payments or of making underpayments, including the imposition of default charges, the risk of repossession of the customer's home, in relation to the customer's credit record and of inability to obtain credit in the future;

(4) inform the customer about the circumstances in which the rates or charges may change, in particular, if they may be varied at the discretion of the firm or can vary subject to a reference rate of interest; and

(5) if the rate of interest can vary subject to a reference rate of interest, other than that of the Bank of England's base rate, inform the customer of the reference rate in question and the rate to be applied.

Where appropriate, the disclosure required by §CONC 15.1.5 R should be explained orally to the customer.

Where a firm has reasonable grounds to suspect that the customer does not understand material aspects of the obligations they will take on and the resulting risks, under a regulated credit agreement, the firm:

(1) must not enter into a regulated credit agreement; and

(2) must provide further explanation of any such obligations or risks.

Before a customer enters into a regulated credit agreement, the firm must:

(1) encourage the customer to read all contractual documentation carefully;

(2) take reasonable steps to ensure the customer has understood the nature of the obligations the customer will take on and the resulting risks;

(3) encourage the customer to obtain independent advice; and

(4) permit the customer an adequate opportunity to seek and obtain such advice.

Before a regulated credit agreement secured on land is entered into:

(1) the firm should consider the adequate explanations it should give to the customer under §CONC 4.2; and

[Note: paragraph 3.1 (box) of ILG]
(2) the firm is required under CONC 5.2A to carry out a creditworthiness assessment.

[Note: paragraphs 1.14 and 4.1 of ILG]

15.1.10 In accordance with PRIN 9 (customer: relationships of trust):

(1) a firm must take reasonable steps to ensure the suitability of its advice, which would include acting in the best interests of a customer where the firm makes a recommendation;

(2) if it appears to the firm that entering into a regulated credit agreement secured on land is not in the best interests of the customer, that fact should be made clear to the customer; and

(3) the firm should encourage the customer to consider whether the credit can be afforded, including in the event the customer’s circumstances change, for example, through a change in employment or retirement.

15.1.11 A firm must set out the nature and purpose of the fees and charges payable by the customer, including any fees or charges payable on the customer’s default:

(1) in the credit agreement; and

(2) in any booklet or leaflet relating to the agreement.

15.1.12 Where rates and charges under a credit agreement are variable, a firm must:

(1) before entering into the agreement, explain to the customer the consequences of such variations on the amount of periodic instalments payable and on the total amount payable;
(2) only increase rates or charges to recover genuine increases in costs of the firm which have an effect on the credit provided under the agreement; and

(3) explain to the customer before changing any rate or charge under the agreement.

15.1.13 Where a customer wishes to make repayments ahead of time:

(1) a firm’s charges for early repayment must be fair and reasonable and must reflect the firm’s necessary costs in relation to such repayment;

(2) the firm must fully explain the process and costs involved in early repayment; and

(3) the firm must allow the customer to make part early repayment of the capital.

15.1.14 [deleted]

15.1.15 If a shortfall remains following the sale of a property, the firm must notify the customer as soon as possible of the amount of the shortfall.
Appendix 1
Total charge for credit rules; and certain exemptions

1.1 Total charge for credit rules for certain agreements secured on land

Interpretation

App 1.1.1 R

(1) For the purposes of this section, references to the period for which credit is provided:

(a) in the case of a credit agreement under which the period for which credit is to be provided is ascertainable at the date of the making of the credit agreement, are references to the period beginning with the relevant date and ending with the end of the period for which credit is to be provided;

(b) in the case of a credit agreement under which the period for which credit is to be provided can be ascertained at the relevant date if the assumption in CONC App 1.1.12 R is applied, are references to the period beginning with the relevant date and ending with the end of the period for which credit would be provided under the credit agreement if the amount given by that assumption were the amount of the credit so provided; and

(c) in any other case, are references to the period of one year referred to in CONC App 1.1.13 R.

(2) References in this section to repayment of the credit under a credit agreement and of the total charge for credit include references to any repayment or payment, as the case may require, of any part of the credit and of the total charge for credit.

Application

App 1.1.2 R

This section applies to regulated credit agreements which are secured on land or to prospective regulated credit agreements which are to be secured on land, except to the extent that the Consumer Credit (Disclosure of Information) Regulations 2010 apply to such agreements.
General provisions about calculation

App 1.1.3

(1) Any calculation under this section shall be made on the following assumptions:

(a) the assumption that the borrower will not be entitled to any income tax relief relating to the transaction other than relief under section 19 of the Income and Corporation Taxes Act 1970 and Schedule 4 to the Finance Act 1976 (which afford relief in respect of premiums under certain policies of insurance) without any deduction under section 21 of the said Act of 1970;

(b) the assumption that no assistance is given under the Home Purchase Assistance and Housing Corporation Guarantee Act 1978;

(c) (i) in the case of a transaction which provides for repayment of the credit or of the total charge for credit at, or not later than, a specified time or times, the assumption that the lender will not exercise any right under the transaction to require repayment at any other time or times;

(ii) in any other case, the assumption that the lender will not exercise any right under the transaction to require repayment;

the borrower, in any case, performing all his obligations under the transaction;

(d) subject to (e) below, in the case of a transaction which provides for variation of the rate or amount of any item included in the total charge for credit in consequence of the occurrence after the relevant date of any event, the assumption that the event will not occur; and, in this sub-paragraph, “event” means an act or omission of the borrower or of the lender or any other event (including where the transaction makes provision for variation upon the continuation of any circumstance, the continuation of that circumstance) but does not include an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the credit agreement; and

(e) in the case of a land-related agreement which provides for the possibility of any variation of the rate of interest in consequence of the occurrence after the relevant date of any event (being an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the credit agreement), the assumption that such a variation will, when the event occurs, take place.

(2) For the purposes of this section

(a) subject to (b) below and CONC App 1.1.18 R, in the case of any credit agreement each provision of credit and each repayment of the credit and of the total charge for credit shall be taken to be made:

(i) at the earliest time provided under the transaction, and

(ii) in a case where any such provision or repayment is to be made at or not later than a specified time, at that time

and, where any such repayment is to be made before the relevant date, it shall be taken to be made on the relevant date;

(b) where under a credit agreement for running-account credit or a credit agreement for fixed-sum credit where the credit is not repayable at specified intervals or in specified amounts a constant period rate of
charge in respect of periods of equal or of nearly equal length is charged, it shall be assumed for the purposes of calculations under this section, notwithstanding CONC App 1.1.17 R, that

(i) the amount of credit outstanding at the beginning of a period is to remain outstanding throughout the period;

(ii) the amount of any credit provided during a period is provided immediately after the end of the period; and

(iii) any repayment of credit or of the total charge for credit made during a period is made immediately after the end of the period;

and

(c) the assumption that the amount of any repayment of credit or of the total charge for credit will, at the time when the repayment is made, be the smallest for which the agreement provides.

(3) In determining the amount of the total of the interest on the credit which may be provided under the credit agreement, any subsidy receivable by any person under [Part II] of the Housing Subsidies Act 1967 shall be deducted.

**Total charge for credit**

For the purposes of the Regulated Activities Order, the total charge for the credit which may be provided under an actual or prospective credit agreement shall be the total of the amounts determined as at the date of the making of the credit agreement of such of the charges specified in CONC App 1.1.5 R as apply in relation to the credit agreement but excluding the amount of the charges specified in CONC App 1.1.6 R.

**Items included in total charge for credit**

Except as provided in CONC App 1.1.6 R, the amounts of the following charges are included in the total charge for credit in relation to a credit agreement:

(a) the total of the interest on the credit which may be provided under the credit agreement;

(b) other charges at any time payable under the transaction by or on behalf of the borrower or a relative of his whether to the lender or any other person; and

(c) a premium under a contract of insurance, payable under the transaction by the borrower or a relative of his, where the making or maintenance of the contract of insurance is required by the lender

(i) as a condition of making the credit agreement, and

(ii) for the sole purpose of ensuring complete or partial repayment of the credit, and complete or partial payment to the lender 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 borrower,

notwithstanding that the whole or part of the charge may be repayable at any time or that the consideration therefor may include matters not within the transaction or subsisting at a time not within the duration of the credit agreement.
Items excluded from total charge for credit

1. The amounts of the following items are not included in the total charge for credit in relation to a credit agreement:

(a) any charge payable under the transaction to the lender upon failure by the borrower or a relative of his to do or to refrain from doing anything which he is required to do or to refrain from doing, as the case may be;

(b) any charge

(i) which is payable by the lender to any person upon failure by the borrower or a relative of his to do or to refrain from doing anything which he is required under the transaction to do or to refrain from doing, as the case may be, and

(ii) which the lender may under the transaction require the borrower or a relative of his to pay to him or to another person on his behalf;

(c) any charge relating to a credit agreement which is a credit agreement to finance a transaction of a description referred to in (2)(a) or (b) of the definition of restricted-use credit agreement, being a charge which would be payable if the transaction were for cash;

(d) any charge (other than a fee or commission charged by a credit broker) not within (c) above

(i) of a description which relates to services or benefits incidental to the credit agreement and also to other services or benefits which may be supplied to the borrower, and

(ii) which is payable pursuant to an obligation incurred by the borrower under arrangements effected before he applies to enter into the credit agreement, not being arrangements under which the borrower is bound to enter into any credit agreement;

(e) subject to (2) below, any charge under arrangements for the care, maintenance or protection of any land or goods;

(f) charges for money transmission services relating to an arrangement for a current account, being charges which vary with the use made by the borrower of the arrangement;

(g) any charge for a guarantee other than a guarantee

(i) which is required by the lender as a condition of making the credit agreement, and

(ii) the purpose of which is to ensure complete or partial repayment of the credit, and complete or partial payment to the lender 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 borrower;

(h) charges for the transfer of funds (other than charges within (f) above) 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 borrower does not have reasonable freedom of choice in the matter and where such charges are abnormally high; but this sub-paragraph 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;
(1) the services are to be performed if, after the date of the making of the credit 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; and

(b) in the case of any other charge within (e)

(i) where 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 lender or a supplier or a credit broker who introduced the borrower and the lender, and

(ii) where the arrangements are made with a person chosen by the borrower, and

(iii) if, in accordance with the transaction, the consent of the lender or of a supplier or of the credit broker who introduced the borrower and the lender is required to the making of the arrangements, where the transaction provides that such consent may not be unreasonably withheld whether because no incidental benefit will or may accrue to the lender or to the supplier or to the credit broker or on any other ground;

and references in this sub-paragraph to the lender, a supplier 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, 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.

Rate of total charge for credit

App 1.1.7 The rate of the total charge for credit in the case of an actual or prospective credit agreement shall be the annual percentage rate of charge determined in accordance with the following provisions of App 1.1.8 to App 1.1.10 and (where it has more than one decimal place) rounded to one decimal place in accordance with App 1.1.8.

App 1.1.8 The annual percentage rate of charge referred to in App 1.1.7 shall be rounded to one decimal place as follows

(a) where the figure at the second decimal place is greater than or equal to 5, the figure at the first decimal place shall be increased by one and the decimal place (or places) following the first decimal place shall be disregarded; and
(b) where the figure at the second decimal place is less than 5, that decimal place and any decimal places following it shall be disregarded.

App 1.1.9 (1) Subject to (4) below, the annual percentage rate of charge is the rate for which satisfies the equation set out in (2) below, expressed as a percentage.

(2) The equation referred to in (1) above is

$$\sum_{K=1}^{K=m} A_K (1 + \dot{i}T)^{K} = \sum_{K'=1}^{K'=m'} A'_{K'} (1 + \dot{i}T)^{K'}$$

where

- $K$ is the number identifying a particular advance of credit;
- $K'$ is the number identifying a particular instalment;
- $A_K$ is the amount of advance $K$;
- $A'_{K'}$ is the amount of instalment $K'$;
- $\Sigma$ represents the sum of all the terms indicated;
- $m$ is the number of advances of credit;
- $m'$ is the total number of instalments;
- $T$ is the interval, expressed in years, between the relevant date and the date of the second advance and those of any subsequent advances number three to $m$;
- and
- $T'$ is the interval, expressed in years, between the relevant date and the dates of instalments numbered one to $m'$. 

(3) In (2) above, references to instalments are references to any payment made by, or on behalf of, the borrower or a relative of his which comprises

- (a) a repayment of all or part of the credit under the credit agreement;
- (b) a payment of all or part of the total charge for credit; or
- (c) both a repayment of all or part of the credit and a payment of all or part of the total charge for credit.

(4) Where more than one rate is given under (1) above, the annual percentage rate of charge is the positive rate nearest to zero or, if no positive rate is so given, the negative rate nearest to zero.

Computation of time

App 1.1.10 (1) This rule has effect for determining the length of any period for the purposes of calculations under CONC App 1.1.7 R to CONC App 1.1.9 R.

(2) A period which is not a whole number of calendar months or a whole number of weeks shall be counted in years and days.

(3) Subject to (4) below, a period which is a whole number of calendar months or a whole number of weeks shall be counted in calendar months or in weeks, as the case may be.
(4) Where a period is both a whole number of calendar months and a whole number of weeks and
   (a) one repayment only is to be made, the period shall be counted in calendar months, or
   (b) more than one repayment is to be made
      (i) if all such repayments are to be made at intervals from the relevant date of one or more weeks, the period shall be counted in weeks, and
      (ii) in any other case, the period shall be counted in calendar months.

(5) A period which is to be counted
   (a) in calendar months shall be taken to be of a length equal to the relevant number of twelfth parts of a year, and
   (b) in weeks, shall be taken to be of a length equal to the relevant number of fifty-second parts of a year.

(6) A day may be taken to be either
   (a) one three hundred and sixty-fifth part of a year or, if it is a leap year, one three hundred and sixty-sixth part of a year; or
   (b) \(
       \frac{1}{365.25}
   \)
   of a year.

(7) Every day shall be taken to be a working day.

Assumptions for calculations

**App1.11**

(1) The provisions of **CONC App 1.1.11 R** to **CONC App 1.1.18 R** shall have effect as the case may require for the purpose of the calculation of the total charge for credit under **CONC App 1.1.4 R** to **CONC App 1.1.6 R** above and of the rate of such charge under **CONC App 1.1.7 R** to **CONC App 1.1.10 R** above in relation to any actual or prospective credit agreement in respect of matters necessary for the calculation which cannot be ascertained by the lender at the date of the making of the credit agreement.

(2) In a case where apart from this paragraph **CONC App 1.1.12 R** and one or more other provisions of **CONC App 1.1.11 R** to **CONC App 1.1.18 R** would fall to be applied, the said **CONC App 1.1.12 R** shall be applied first.

Assumption about the amount of credit

**App1.12**

Where the amount of the credit to be provided under the credit agreement cannot be ascertained at the date of the making of the credit agreement,

(a) in the case of a credit agreement for running-account credit under which there is a credit limit, that amount shall be taken to be such credit limit; and

(b) in any other case, that amount shall be taken to be £100.
Assumption about period for which credit is provided

Where the period for which credit is to be provided is not ascertainable at the date of the making of the credit agreement, it shall be assumed that credit is provided for one year beginning with the relevant date.

Assumption about index-linked rates and amounts

Subject to CONC App 1.1.15 R, where the rate or amount of any item included in the total charge for credit or the amount of any repayment of credit under a transaction falls to be ascertained thereunder by reference to the level of any index or other factor in accordance with any formula specified therein, the rate or amount, as the case may be, shall be taken to be the rate or amount so ascertained, the formula being applied as if the level of such index or other factor subsisting at the date of the making of the credit agreement were that subsisting at the date by reference to which the formula is to be applied.

Assumptions about variations of interest rates in land-related agreements

(1) This rule applies to any land-related agreement which provides for the possibility of any variation of the rate of interest if it is to be assumed, by virtue of CONC App 1.1.3R (1)(e), that the variation will take place but the amount of the variation cannot be ascertained at the date of the making of the credit agreement.

(2) In this rule

"initial standard variable rate" means

(a) the standard variable rate of interest which would be applied by the lender to the credit agreement on the date of the making of the credit agreement if the credit agreement provided for interest to be paid at the lender’s standard variable rate with effect from that date, or

(b) if there is no such rate, the standard variable rate of interest applied by the lender on the date of the making of the credit agreement in question to other land-related agreements or, where there is more than one such rate, the highest such rate,

taking no account (for the avoidance of doubt) of any discount or other reduction to which the borrower would or might be entitled; and
“varied rate” means any rate of interest charged when a variation of the rate of interest is to be assumed to take place by virtue of CONC App 1.1.3R (1)(e).

(3) Where a land-related agreement provides a formula for calculating a varied rate by reference to a standard variable rate of interest applied by the lender, or any other fluctuating rate of interest, but does not enable the varied rate to be ascertained at the date of the making of the credit agreement because it is not known on that date what the standard variable rate will be or (as the case may be) at what level the fluctuating rate will be fixed when the varied rate falls to be calculated, it shall be assumed that that rate or level will be the same as the initial standard variable rate.

(4) Where a land-related agreement provides for the possibility of any variation in the rate of interest (other than a variation referred to in (3) above) which it is to be assumed, by virtue of CONC App 1.1.3R (1)(e) will take place but does not enable the amount of that variation to be ascertained at the date of the making of the credit agreement, it shall be assumed that the varied rate will be the same as the initial standard variable rate.

Assumption about changes in charges

App1.1.16 R Where

(a) the period for which the credit or any part thereof is to be or may be provided cannot be ascertained at the date of the making of the credit agreement; and

(b) the rate or amount of any item included in the total charge for credit will change at a time provided in the transaction within one year beginning with the relevant date,

the rate or amount shall be taken to be the highest rate or amount at any time obtaining under the transaction in that year.

Assumption about time of provision of credit

App1.1.17 R Where the earliest date on which credit is to be provided cannot be ascertained at the date of the making of the credit agreement, it shall be assumed that credit is provided on that date.

Assumptions about time of payment of charges

App1.1.18 R In the case of any transaction it shall be assumed

(a) that a charge payable at a time which cannot be ascertained at the date of the making of the credit agreement shall be payable on the relevant date or, where it may reasonably be expected that a borrower will not make payment on that date, on the earliest date at which it may reasonably be expected that he will make payment; or

(b) where more than one payment of a charge of the same description falls to be made at times which cannot be ascertained at the date of the making of the credit agreement, that the first such payment will be payable on the relevant date (or, where it may reasonably be expected that a borrower will not make payment on that date, at the earliest date on which it may
reasonably be expected that he will make payment), that the last such payment will be payable at the end of the period for which credit is provided and that all other such payments (if any) will be payable at equal intervals between such times,

as the case may require.

1.2 Total charge for credit rules for other agreements

Interpretation

(1) In this section

(a) a reference to a rate of interest is a reference to the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

(b) a reference to an open-end regulated credit agreement is to a regulated credit agreement of no fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

Application

This section shall not apply to regulated credit agreements which are secured on land or to prospective regulated credit agreements which are to be secured on land except to the extent that the Consumer Credit (Disclosure of Information) Regulations 2010 apply to such agreements.

Total charge for credit

(1) The total charge for credit which may be provided under an actual or prospective regulated credit agreement shall be the total cost of credit to the borrower determined in accordance with the requirements in (2) to (5) below.

(2) Subject to (3), the following costs shall be included in the total cost of credit to the borrower:

(-a) any fee or charge payable by the borrower to a credit broker in connection with the agreement (if the fee or charge is known to the lender);

(a) the costs of maintaining an account recording both payment transactions and drawdowns;

(b) the costs of using a means of payment for both payment transactions and drawdowns;

(c) other costs relating to payment transactions.

(3) The costs at (2) shall not be included in the total cost of credit to the borrower where
(a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the regulated credit agreement or in any other agreement made with the borrower;

(b) in the case of an overdraft facility the costs do not relate to that facility.

(4) Costs in respect of an ancillary service shall be included in the total cost of credit to the borrower if the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed.

(5) The total cost of credit to the borrower shall not include

(a) any charges payable by or on behalf of the borrower or a relative of his for non-compliance with his commitments contained in the regulated credit agreement;

(b) charges which, for purchases of goods or services, he or a relative of his is obliged to pay whether the transaction is effected in cash or on credit.

(6) In (4), the reference to an ancillary service means a service that relates to the provision of credit under the regulated credit agreement and includes in particular an insurance or payment protection policy.

(7) The total cost of credit to the borrower must not take account of any discount, reward (including ‘cash back’) or other benefit to which the borrower might be entitled, whether such an entitlement is subject to conditions or otherwise.

### Total cost of credit

The total cost of credit to the borrower includes fee or charge payable by the borrower to a credit broker, if the fee or charge is known to the lender. ■ CONC 4.4.2R(3) requires the credit broker to disclose their fee to the lender. Lenders should take reasonable steps to ascertain whether a fee is payable to the credit broker and, if so, the amount of the fee.

### Calculation of the annual percentage rate of charge

The annual percentage rate of charge shall be calculated in accordance with the mathematical formula set out in ■ CONC App 1.2.6 R.

### Assumptions for calculation

For the purposes of calculating the total charge for credit and the annual percentage rate of charge:

(a) it shall be assumed that the regulated credit agreement is to remain valid for the period agreed and that the lender and the borrower will fulfil their obligations under the terms and by the dates specified in that agreement;

(b) in the case of a regulated credit agreement allowing variations in

(i) the rate of interest, or

(ii) where applicable, charges contained in the annual percentage rate of charge,
where these cannot be quantified at the time of calculation, it shall be assumed that they will remain at the initial level and will be applicable for the duration of the agreement;

(c) where not all rates of interest are determined in the regulated credit agreement, a rate of interest shall, where necessary, be assumed to be fixed only for the partial periods for which the rate of interest is determined exclusively by a fixed specific percentage agreed when the agreement is made;

(d) where different rates of interest and charges are to be offered for limited periods or amounts during the regulated credit agreement, the rate of interest and the charge shall, where necessary, be assumed to be at the highest level for the duration of the agreement;

(e) where there is a fixed rate of interest agreed in relation to an initial period under a regulated credit agreement, at the end of which a new rate of interest is determined and subsequently periodically adjusted according to an agreed indicator, it shall, where necessary, be assumed that, at the end of the period of the fixed rate of interest, the rate of interest is the same as at the time of making the calculation, based on the value of the agreed indicator at that time;

(f) where the regulated credit agreement gives the borrower freedom of drawdown, the total amount of credit shall, where necessary, be assumed to be drawn down immediately and in full;

(fa) where the regulated credit agreement imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit shall, where necessary, be assumed to be at the maximum amount provided for in the agreement and to be drawn down on the earliest date provided for in the agreement;

(g) where the regulated credit agreement provides different ways of drawdown with different charges or rates of interest, the total amount of credit shall, where necessary, be assumed to be drawn down at the highest charge and rate of interest applied to the most common drawdown mechanism for the credit product to which the agreement relates;

(h) for the purposes of (g), the most common drawdown mechanism for a particular credit product shall be assessed on the basis of the volume of transactions for that product in the preceding 12 months, or expected volumes in the case of a new credit product;

(i) in the case of an overdraft facility, the total amount of credit shall, where necessary, be assumed to be drawn down in full and for the entire duration of the regulated credit agreement;

(j) for the purposes of (i), if the duration of the overdraft facility is not known, it shall, where necessary, be assumed that the duration of the facility is three months;

(k) in the case of an open-end regulated credit agreement, other than an overdraft facility, it shall, where necessary, be assumed that the credit is provided for a period of one year starting from the date of the initial drawdown, and that the final payment made by the borrower clears the balance of capital, interest and other charges, if any;

(l) for the purposes of (k):
(i) the capital is repaid by the borrower in equal monthly payments, commencing one month after the date of initial drawdown;

(ii) in cases where the capital must be repaid in full, in a single payment, within or after each payment period, successive drawdowns and repayments of the entire capital by the borrower shall, where necessary, be assumed to occur over the period of one year;

(iii) interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the regulated credit agreement;

(m) in the case of a regulated credit agreement, other than an overdraft facility, or an open-end regulated credit agreement:

(i) where the date or amount of a repayment of capital to be made by the borrower cannot be ascertained, it shall, where necessary, be assumed that the repayment is made at the earliest date provided for under the regulated credit agreement and is for the lowest amount for which the regulated credit agreement provides;

(ii) where it is not known on which date the regulated credit agreement is made, the date of the initial drawdown shall, where necessary, be assumed to be the date which results in the shortest interval between that date and the date of the first payment to be made by the borrower;

(n) where the date or amount of a payment to be made by the borrower cannot be ascertained on the basis of the regulated credit agreement or the assumptions set out in (i) to (m), it shall, where necessary, be assumed that the payment is made in accordance with the dates and conditions required by the lender and, when these are unknown:

(i) interest charges are paid together with repayments of capital;

(ii) a non-interest charge expressed as a single sum is paid on the date of the making of the regulated credit agreement;

(iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall, where necessary, be assumed to be equal amounts;

(iv) the final payment clears the balance of capital, interest and other charges, if any;

(o) in the case of an agreement for running-account credit, where the credit limit applicable to the credit is not yet known, that credit limit shall, where necessary, be assumed to be £1,200.

App1.2.5A The assumptions set out in CONC App 1.2.5R are intended to ensure that the total charge for credit and the annual percentage rate of charge are calculated in a consistent way to promote the comparability of different offers. The use of the term ‘where necessary’ in assumptions (c) to (o) in that rule makes clear that these assumptions only apply where they are necessary in relation to the specific agreement, for example, where key features such as the amount or duration of credit are uncertain. In general, though, the total charge for credit and the annual percentage rate of charge calculation will depend on the terms of the individual regulated credit agreement.
Calculation of the Annual Percentage Rate of Charge

(1) The annual percentage rate of charge ("APR") is calculated by means of the equation in (2) which equates, on an annual basis, the total present value of drawdowns with the total present value of repayments and payments of charges.

\[ \sum_{k=1}^{m} C_k(1 + X)^{-t_k} = \sum_{l=1}^{m'} D_l(1 + X)^{-s_l} \]

where

- \( X \) is the APR;
- \( m \) is the number of the last drawdown;
- \( k \) is the number of a drawdown, thus \( 1 \leq k \leq m \);
- \( C_k \) is the amount of drawdown \( k \);
- \( t_k \) is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus \( t_1 = 0 \);
- \( m' \) is the number of the last repayment or payment of charges;
- \( l \) is the number of a repayment or payment of charges;
- \( D_l \) is the amount of a repayment or payment of charges;
- \( s_l \) is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

(2) The equation referred to in (1) is

(3) For the purposes of (2)

(a) the amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals;
(b) the starting date shall be that of the first drawdown;
(c) intervals between dates used in the calculations shall be expressed in years or in fractions of a year;
(d) a year is assumed to have 365 days (366 days for leap years), 52 weeks or 12 equal months;
(e) an equal month is assumed to have 30.41666 days (365/12) regardless of whether or not it is a leap year;
(f) the result of the calculation shall be expressed with an accuracy of at least one decimal place; if the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one;
(g) the equation can be rewritten as set out in (h) using a single sum and the concept of flows (\( A_k \)), which will be positive or negative, either paid or received during periods \( l \) to \( k \), expressed in years;
(h) the equation referred to in (g) is
1.3 Exemption of certain credit agreements secured on land

Interpretation

(1) This section specifies:

(a) the persons or classes of persons to whom the exemption in article 60E(2) of the Regulated Activities Order applies; and

(b) the agreements or classes of agreement to which the exemption in article 60E(2) of the Regulated Activities Order applies.

Paragraphs (2) to (5) do not apply where the applicable agreement is an MCD article 3(1)(b) credit agreement.

(2) Where the lender is a body specified in CONC App 1.3.2 or an authorised person with permission to accept deposits, article 60E(2) of the Regulated Activities Order applies only to

(a) a borrower-lender-supplier agreement falling within (a) or (c) of the definition of relevant credit agreement relating to the purchase of land;

(b) a borrower-lender agreement secured by any legal or equitable mortgage on land to finance

(i) the purchase of land; or

(ii) the provision of dwellings or business premises on any land; or

(iii) subject to (3) below, the alteration, enlarging, repair or improvement of a dwelling or business premises on any land;

(c) a borrower-lender agreement secured by any legal or equitable mortgage on land to refinance any existing indebtedness of the borrower, whether to the lender or another person, under any agreement by which the borrower was provided with credit for any of the purposes specified in (b)(i) to (iii) above.

(3) (2)(b)(iii) above applies only

(a) where the lender is the lender under

(i) an agreement (whenever made) by which the borrower is provided with credit for any of the purposes specified in (2)(b)(i) and (2)(b)(ii); or
(ii) an agreement (whenever made) refinancing an agreement under which the borrower is provided with credit for any of the said purposes,

being, in either case, an agreement relating to the land referred to in (2)(b)(iii) and secured by a legal or equitable mortgage on that land; or

(b) where a borrower-lender agreement to finance the alteration, enlarging, repair or improvement of a dwelling, secured by a legal or equitable mortgage on that dwelling, is made as a result of any such services as are described in section 4(3)(e) of the Housing Associations Act 1985 which are certified as having been provided by

(i) a local authority;

(ii) a housing association within the meaning of section 1 of the Housing Associations Act 1985 or article 3 of the Housing (Northern Ireland) Order 1992;

(iii) a body established by such a housing association for the purpose of providing such services as are described in the said section 4(3)(e) of the Housing Associations Act 1985;

(iv) a charity;

(v) the National Home Improvement Council;

(vi) the Northern Ireland Housing Executive; or

(vii) a body, or a body of any description, that has been approved by the Secretary of State under section 169(4)(c) of the Local Government and Housing Act 1989 or the Department of the Environment for Northern Ireland under article 103(4)(c) of the Housing (Northern Ireland) Order 1992.

(4) Where the lender is a body specified in CONC App 1.3.3 R, the exemption in article 60E(2) of the Regulated Activities Order applies only to an agreement of a description specified in that rule in relation to that body and made pursuant to an enactment or for a purpose so specified.

(5) Where the lender is a body specified in CONC App 1.3.4 R, the exemption in article 60E (2) of the Regulated Activities Order applies only to an agreement of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c), being an agreement advancing money on the security of a dwelling-house.

### Bodies whose agreements of the specified description are exempt agreements

<table>
<thead>
<tr>
<th>INSURANCE COMPANIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abbey Life Assurance Company Limited</td>
</tr>
<tr>
<td>Abbey Life Pension and Annuities Limited</td>
</tr>
<tr>
<td>Albany Life Assurance Company Limited</td>
</tr>
<tr>
<td>Allchurches Life Assurance Limited</td>
</tr>
<tr>
<td>Alliance Assurance Company Limited</td>
</tr>
<tr>
<td>Allied Dunbar Assurance PLC</td>
</tr>
<tr>
<td>Ambassador Life Assurance Company Limited</td>
</tr>
<tr>
<td>American Life Insurance Company</td>
</tr>
<tr>
<td>Ansvar Insurance Company Limited</td>
</tr>
</tbody>
</table>
Bodies whose agreements of the specified description are exempt agreements

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlas Assurance Company Limited</td>
<td>Australian Mutual Provident Society</td>
</tr>
<tr>
<td>Avon Insurance PLC</td>
<td>Black Horse Life Assurance Company Limited</td>
</tr>
<tr>
<td>Bradford Insurance Company Limited</td>
<td>Britannic Assurance Public Limited Company</td>
</tr>
<tr>
<td>The British &amp; European Reinsurance Company Limited</td>
<td>British Equitable Assurance Company Limited</td>
</tr>
<tr>
<td>The British Life Office Limited</td>
<td>The British Oak Insurance Company Limited</td>
</tr>
<tr>
<td>British Reserve Insurance Company Limited</td>
<td>Caledonian Insurance Company</td>
</tr>
<tr>
<td>The Cambrian Insurance Company Limited</td>
<td>The Canada Life Assurance Company</td>
</tr>
<tr>
<td>Cannon Assurance Limited</td>
<td>Car and General Insurance Corporation Limited</td>
</tr>
<tr>
<td>City of Westminster Assurance Company Limited</td>
<td>City of Westminster Assurance Society Limited</td>
</tr>
<tr>
<td>Clerical, Medical and General Life Assurance Society</td>
<td>Colonial Life (UK) Limited</td>
</tr>
<tr>
<td>The Colonial Mutual Life Assurance Society Limited</td>
<td>Commercial Union Assurance Company plc</td>
</tr>
<tr>
<td>Commercial Union Pensions Management Limited</td>
<td>Commercial Union Life Assurance Company Limited</td>
</tr>
<tr>
<td>Confederation Life Insurance Company</td>
<td>The Contingency Insurance Company Limited</td>
</tr>
<tr>
<td>Co-operative Insurance Society Limited</td>
<td>Cornhill Insurance Public Limited Company</td>
</tr>
<tr>
<td>Criterion Insurance Company Limited</td>
<td>Crown Life Assurance Company Limited</td>
</tr>
<tr>
<td>Crown Life Insurance Company Limited</td>
<td>Crown Life Insurance Company Limited</td>
</tr>
<tr>
<td>Crown Life Pensions Limited</td>
<td>Crusader Insurance PLC</td>
</tr>
<tr>
<td>The Dominion Insurance Company Limited</td>
<td>Eagle Star Insurance Company Limited</td>
</tr>
<tr>
<td>Ecclesiastical Insurance Office plc</td>
<td>Economic Insurance Company Limited</td>
</tr>
<tr>
<td>English &amp; American Insurance Company Limited</td>
<td>The Equitable Life Assurance Society</td>
</tr>
<tr>
<td>Equico International Limited</td>
<td>Equity &amp; Law Life Assurance Society plc</td>
</tr>
<tr>
<td>Essex and Suffolk Insurance Company Limited</td>
<td></td>
</tr>
</tbody>
</table>
### Bodies whose agreements of the specified description are exempt agreements

- Excess Insurance Company Limited
- Federation Mutual Insurance Limited
- Fine Art and General Insurance Company Limited
- Friends' Provident Life Office
- FS Assurance Limited
- General Accident Fire and Life Assurance Corporation Public Limited Company
- General Accident Life Assurance Limited
- General Accident Linked Life Assurance Limited
- General Portfolio Life Insurance Public Limited Company
- Gisborne Life Assurance Company Limited
- Gresham Life Assurance Society Limited
- Guardian Assurance plc
- Guardian Royal Exchange Assurance plc
- Hill Samuel Life Assurance Limited
- The Ideal Insurance Company Limited
- The Imperial Life Assurance Company of Canada
- Irish Life Assurance plc
- The Iron Trades Employers Insurance Association Limited
- Legal and General Assurance Society Limited
- The Licenses and General Insurance Company Limited
- The Life Association of Scotland Limited
- London Aberdeen & Northern Mutual Assurance Society Limited
- London and Manchester Assurance Company Limited
- London and Manchester (Pensions) Limited
- London & Scottish Assurance Corporation Limited
- The London Assurance
- The London Life Association Limited
- The Manufacturers Life Insurance Company
- Marine and General Mutual Life Assurance Society
- Maritime Insurance Company Limited
- Medical Sickness Annuity & Life Assurance Society Limited
- The Mercantile and General Reinsurance Company plc
- Midland Assurance Limited
- The Motor Union Insurance Company Limited
- Minister Insurance Company Limited
- Municipal Life Assurance Limited
- Municipal Mutual Insurance Limited
- NALGO Insurance Association Limited
- National Employers' Life Assurance Company Limited
- National Employers' Mutual General Insurance Association Limited
- The National Farmers Union Mutual Insurance Society Limited
- National House-Building Council
Bodies whose agreements of the specified description are exempt agreements

<table>
<thead>
<tr>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>The National Insurance and Guarantee Corporation PLC</td>
</tr>
<tr>
<td>The National Mutual Life Association of Australasia Limited</td>
</tr>
<tr>
<td>National Mutual Life Assurance Society</td>
</tr>
<tr>
<td>National Provident Institution</td>
</tr>
<tr>
<td>National Vulcan Engineering Insurance Group Limited</td>
</tr>
<tr>
<td>N.E.L. Pensions Limited</td>
</tr>
<tr>
<td>The New Zealand Insurance plc</td>
</tr>
<tr>
<td>North British &amp; Mercantile Insurance Company Limited</td>
</tr>
<tr>
<td>The Northern Assurance Company Limited</td>
</tr>
<tr>
<td>Norwich Union Asset Management Limited</td>
</tr>
<tr>
<td>Norwich Union Fire Insurance Society Limited</td>
</tr>
<tr>
<td>Norwich Union Insurance Group (Pensions Management) Limited</td>
</tr>
<tr>
<td>Norwich Union Life Insurance Society</td>
</tr>
<tr>
<td>NRG London Reinsurance Company Limited</td>
</tr>
<tr>
<td>Oaklife Assurance Limited</td>
</tr>
<tr>
<td>The Ocean Accident &amp; Guarantee Corporation Limited</td>
</tr>
<tr>
<td>The Orion Insurance Company P.L.C.</td>
</tr>
<tr>
<td>Pearl Assurance Public Limited Company</td>
</tr>
<tr>
<td>Pensions Management (SWF) Limited</td>
</tr>
<tr>
<td>Permanent Insurance Company Limited</td>
</tr>
<tr>
<td>Phoenix Assurance Public Limited Company</td>
</tr>
<tr>
<td>Pioneer Mutual Insurance Company Limited</td>
</tr>
<tr>
<td>Prolific Life and Pensions Limited</td>
</tr>
<tr>
<td>Property Growth Pensions &amp; Annuities Limited</td>
</tr>
<tr>
<td>Provident Life Association Limited</td>
</tr>
<tr>
<td>Provident Mutual Life Assurance Association</td>
</tr>
<tr>
<td>Provincial Insurance Public Limited Company</td>
</tr>
<tr>
<td>The Prudential Assurance Company Limited</td>
</tr>
<tr>
<td>Railway Passengers Assurance Company</td>
</tr>
<tr>
<td>Refuge Assurance, public Limited company</td>
</tr>
<tr>
<td>Regency Life Assurance Company Limited</td>
</tr>
<tr>
<td>The Reliance Fire and Accident Insurance Corporation Limited</td>
</tr>
<tr>
<td>The Reliance Marine Insurance Company Limited</td>
</tr>
<tr>
<td>Reliance Mutual Insurance Society Limited</td>
</tr>
<tr>
<td>Royal Exchange Assurance</td>
</tr>
<tr>
<td>Royal Insurance Public Limited Company</td>
</tr>
<tr>
<td>Royal Insurance (Int.) Limited</td>
</tr>
<tr>
<td>Royal Insurance (U.K.) Limited</td>
</tr>
<tr>
<td>Royal Life Insurance Limited</td>
</tr>
<tr>
<td>Royal Life (Unit Linked Assurances) Limited</td>
</tr>
<tr>
<td>Royal Life (Unit Linked Pension Funds) Limited</td>
</tr>
<tr>
<td>The Royal London Mutual Insurance Society Limited</td>
</tr>
<tr>
<td>Bodies whose agreements of the specified description are exempt agreements</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>The Royal National Pension Fund for Nurses</td>
</tr>
<tr>
<td>Royal Reinsurance Company Limited</td>
</tr>
<tr>
<td>Schroder Life Assurance Limited</td>
</tr>
<tr>
<td>Scottish Amicable Life Assurance Society</td>
</tr>
<tr>
<td>Scottish Equitable Life Assurance Society</td>
</tr>
<tr>
<td>Scottish General Insurance Company Limited</td>
</tr>
<tr>
<td>Scottish Insurance Corporation Limited</td>
</tr>
<tr>
<td>The Scottish Life Assurance Company</td>
</tr>
<tr>
<td>The Scottish Mutual Assurance Society</td>
</tr>
<tr>
<td>The Scottish Provident Institution</td>
</tr>
<tr>
<td>Scottish Union and National Insurance Company</td>
</tr>
<tr>
<td>Scottish Widows' Fund and Life Assurance Society</td>
</tr>
<tr>
<td>Sentinel Life plc</td>
</tr>
<tr>
<td>Skandia Life Assurance Company Limited</td>
</tr>
<tr>
<td>Standard Life Assurance Company</td>
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<tr>
<td>Standard Life Pension Funds Limited</td>
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<td>The State Assurance Company Limited</td>
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<tr>
<td>Suffolk Life Annuities Limited</td>
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<tr>
<td>Sun Alliance and London Assurance Company Limited</td>
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<tr>
<td>Sun Insurance Office Limited</td>
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<tr>
<td>Sun Life Assurance Company of Canada</td>
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<tr>
<td>Sun Life Assurance Society plc</td>
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<tr>
<td>Target Life Assurance Company Limited</td>
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<tr>
<td>Teachers Assurance Company Limited</td>
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<tr>
<td>Trident Investors Life Assurance Company Limited</td>
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<tr>
<td>Trident Life Assurance Company Limited</td>
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<tr>
<td>Trinity Insurance Company Limited</td>
</tr>
<tr>
<td>UK Life Assurance Company Limited</td>
</tr>
<tr>
<td>United British Insurance Company Limited</td>
</tr>
<tr>
<td>United Friendly Insurance plc</td>
</tr>
<tr>
<td>United Kingdom Temperance and General Provident Institution</td>
</tr>
<tr>
<td>United Standard Insurance Company Limited</td>
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<tr>
<td>The University Life Assurance Society</td>
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<tr>
<td>The Victory Reinsurance Company Limited</td>
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<tr>
<td>Wesleyan and General Assurance Society</td>
</tr>
<tr>
<td>The Western Australian Insurance Company Limited</td>
</tr>
<tr>
<td>The White Cross Insurance Company Limited</td>
</tr>
<tr>
<td>World-Wide Reassurance Company Limited</td>
</tr>
<tr>
<td>The Yorkshire Insurance Company Limited</td>
</tr>
<tr>
<td>Zurich Life Assurance Company Limited</td>
</tr>
<tr>
<td>FRIENDLY SOCIETIES</td>
</tr>
<tr>
<td>The Ancient Order of Foresters Friendly Society</td>
</tr>
</tbody>
</table>
Bodies whose agreements of the specified description are exempt agreements

- Anglo-Saxons Friendly Society
- Blackburn Philanthropic Mutual Assurance Society
- British Benefit Society
- British Order of Ancient Free Gardeners' Friendly Society
- Brunel Assurance Society
- Cirencester Benefit Society
- Civil Servants’ Annuities Assurance Society
- Colmore Friendly Society
- Coventry Assurance Society
- Dentists' Provident Society
- Devon and Exeter Women’s Equitable Benefit Society
- The Exeter Equitable Friendly Society
- Grand United Order of Oddfellows Friendly Society
- The Hampshire and General Friendly Society
- Harvest Friendly Society
- Hearts of Oak Benefit Society
- The Ideal Benefit Society
- Independent Order of Oddfellows Kingston Unity Friendly Society
- The Independent Order of Odd Fellows Manchester Unity Friendly Society
- The Independent Order of Rechabites, Salford Unity, Friendly Society
- Leeds District of the Ancient Order of Foresters Investment Association
- Leek Assurance Collecting Society
- The Leicester District Foresters’ Investment Society
- Liverpool Victoria Friendly Society
- The Manchester and Districts of the Ancient Order of Foresters Investment Association
- National Deposit Friendly Society
- National Equalized Druids Friendly Society
- National United Order of Free Gardeners Friendly Society
- New Tab Friendly Society
- Northumberland and Durham Miners’ Permanent Relief Fund Friendly Society
- Nottingham Oddfellows Assurance Friendly Society
- The Order of Druids Friendly Society
- The Order of the Sons of Temperance Friendly Society
- Original Holloway Society
- Pioneer Benefit Society
- Preston Catholic Collecting Society
- Preston Shelley Assurance Collecting Society
- Provident Reliance Friendly Society
- Rational and County Assurance Society
- Royal Liver Friendly Society
- Scottish Friendly Assurance Society
- The Scottish Legal Life Assurance Society
### Bodies whose agreements of the specified description are exempt agreements

<table>
<thead>
<tr>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Shepherds Friendly Society</td>
</tr>
<tr>
<td>Sons of Scotland Temperance Friendly Society</td>
</tr>
<tr>
<td>Stepney District Distressed Members' Pension Benevolent Fund</td>
</tr>
<tr>
<td>The Sussex Widow and Orphans Society</td>
</tr>
<tr>
<td>Teachers Provident Society</td>
</tr>
<tr>
<td>Time Assurance Society</td>
</tr>
<tr>
<td>Tunbridge Wells Equitable Friendly Society</td>
</tr>
<tr>
<td>Tunstall and District Assurance Collecting Society</td>
</tr>
<tr>
<td>United Ancient Order of Druids Friendly Society</td>
</tr>
<tr>
<td>United Kingdom Civil Service Benefit Society</td>
</tr>
<tr>
<td>United Patriots' National Benefit Society</td>
</tr>
<tr>
<td>West Surrey General Benefit Society</td>
</tr>
<tr>
<td>Widow and Orphan Fund of the Woolwich District of the Independent Order of</td>
</tr>
<tr>
<td>Odd Fellows, Manchester Unity Friendly Society</td>
</tr>
<tr>
<td>Widow and Orphans' Fund, Stepney District of the Independent Order of Odd</td>
</tr>
<tr>
<td>Fellows, Manchester Unity Friendly Society</td>
</tr>
<tr>
<td>Widow, Widowers and Orphans' Fund of the Godalming District of the</td>
</tr>
<tr>
<td>Independent Order of Oddfellows, Manchester Unity, Friendly Society</td>
</tr>
<tr>
<td>Wiltshire Holloway Benefit Society</td>
</tr>
<tr>
<td><strong>CHARITIES</strong></td>
</tr>
<tr>
<td>The Central Board of Finance of the Church of England</td>
</tr>
<tr>
<td>Church Commissioners</td>
</tr>
<tr>
<td>The Church of England Pensions Board</td>
</tr>
<tr>
<td>The Church of Scotland</td>
</tr>
<tr>
<td>The Church of Scotland General Trustees</td>
</tr>
<tr>
<td>Church of Scotland Trust</td>
</tr>
<tr>
<td>The Representative Body of the Church in Wales</td>
</tr>
<tr>
<td>Timber Trades Benevolent Society</td>
</tr>
<tr>
<td>The Winchester Diocesan Board of Finance</td>
</tr>
<tr>
<td>York Diocesan Board of Finance Limited</td>
</tr>
<tr>
<td><strong>AGRICULTURAL CORPORATIONS</strong></td>
</tr>
<tr>
<td>The Agricultural Mortgage Corporation Public Limited Company</td>
</tr>
<tr>
<td>The Scottish Agricultural Securities Corporation Public Limited Company</td>
</tr>
<tr>
<td><strong>OTHER BODIES</strong></td>
</tr>
<tr>
<td>General Practice Finance Corporation Limited</td>
</tr>
</tbody>
</table>

### App 1.3.3 Bodies Corporate Description of Agreement and Enactments

**LAND IMPROVEMENT COMPANIES**

*Relevant credit agreements relating to the purchase of land*, being agreements made pursuant to

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the Lands Improvement Company’s Acts 1853 to 1969; or</td>
</tr>
<tr>
<td>(b) the Improvement of Land Acts 1864 and 1899.</td>
</tr>
<tr>
<td>BODIES CORPORATE NAMED OR SPECIFICALLY REFERRED TO IN A PUBLIC GENERAL ACT - UNITED KINGDOM</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>The Greater London Authority</td>
</tr>
<tr>
<td>Homes and Communities Agency</td>
</tr>
<tr>
<td>The Eastern Electricity Board:</td>
</tr>
<tr>
<td>The Electricity Council:</td>
</tr>
<tr>
<td>The London Docklands Development Corporation:</td>
</tr>
<tr>
<td>The London Electricity Board:</td>
</tr>
<tr>
<td>The North Eastern Electricity Board:</td>
</tr>
<tr>
<td>Sea Fish Industry Authority:</td>
</tr>
<tr>
<td>The South Eastern Electricity Board:</td>
</tr>
<tr>
<td>The South Western Electricity Board:</td>
</tr>
<tr>
<td>The Southern Electricity Board:</td>
</tr>
</tbody>
</table>
### The Yorkshire Electricity Board:

Agreements of a description falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c), being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.

### NORTHERN IRELAND

#### Eastern Health and Social Services Board:

*Relevant credit agreements relating to the purchase of land, being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.*

#### Northern Health and Social Services Board:

*Relevant credit agreements relating to the purchase of land, being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.*

#### Southern Health and Social Services Board:

*Relevant credit agreements relating to the purchase of land, being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.*

#### Welsh Ministers

*Relevant credit agreements relating to the purchase of land, being agreements falling within CONC App 1.3.1R (2)(a) to CONC App 1.3.1R (2)(c) which are made pursuant to section 36 of the New Towns Act 1981 and which related to property of the Commission for the New Towns transferred to them under a scheme made under section 51(1) of the Housing and Regeneration Act 2008.*

#### Western Health and Social Services Board:

*Relevant credit agreements relating to the purchase of land, being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.*

---

### BODIES CORPORATE NAMED OR SPECIFICALLY REFERRED TO IN AN ORDER MADE UNDER SECTION 156(4), 444(1) OR 447(2)(a) OF THE HOUSING ACT 1985

- Abbey Life Executive Mortgages Limited
- Abbey Life Funding Limited
- Abbey Life Home Loans Limited
- Abbey Life Home Services Limited
- Abbey Life Mortgage Finance Limited
- Abbey Life Mortgage Loans Limited
- Abbey Life Mortgage Securities Limited
- Abbey Life Residential Loans Limited
- Albion Home Loans Limited
- Alliance & Leicester Mortgage Loans Limited
- Alliance & Leicester Mortgage Loans (No. 2) Limited
- Alliance & Leicester Mortgage Loans (No. 3) Limited
- Alliance & Leicester Mortgage Loans (No. 4) Limited
- Bradford & Bingley Homeloans Limited
- Bradford & Bingley Homeloans Management Limited
- Bradford & Bingley Loans Limited
- Bradford & Bingley Management Limited
BODIES CORPORATE NAMED OR SPECIFICALLY REFERRED TO IN AN ORDER MADE UNDER SECTION 156(4), 444(1) OR 447(2)(a) OF THE HOUSING ACT 1985

<table>
<thead>
<tr>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bradford &amp; Bingley Mortgages Limited</td>
</tr>
<tr>
<td>Bradford &amp; Bingley Mortgage Management Limited</td>
</tr>
<tr>
<td>Bradford &amp; Bingley Secured Loans Limited</td>
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<tr>
<td>Bradford &amp; Bingley Secured Loans Management Limited</td>
</tr>
<tr>
<td>Britannia Mortgage Company Number One Limited</td>
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<tr>
<td>Britannia Mortgage Company Number Two Limited</td>
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<tr>
<td>Chelsea Mortgage Services Limited</td>
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<tr>
<td>CIS Home Loans Limited</td>
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<tr>
<td>CIS Mortgage Finance Limited</td>
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<tr>
<td>CIS Mortgage Maker Limited</td>
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<tr>
<td>CIS Residential Mortgages Limited</td>
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<tr>
<td>CL Mortgages Limited</td>
</tr>
<tr>
<td>Darlington Mortgage Services Limited</td>
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<tr>
<td>Derbyshire Home Loans Limited</td>
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<tr>
<td>General Portfolio Finance Limited</td>
</tr>
<tr>
<td>Gracechurch Mortgage Finance (No. 2) PLC</td>
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<tr>
<td>Gracechurch Mortgage Finance (No. 3) PLC</td>
</tr>
<tr>
<td>Halifax Loans Limited</td>
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<tr>
<td>Halifax Loans (No. 2) Limited</td>
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<tr>
<td>Halifax Loans (No. 3) Limited</td>
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<td>Halifax Loans (No. 4) Limited</td>
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<tr>
<td>HMC First Home National PLC</td>
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<tr>
<td>Home Loans Direct Limited</td>
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<tr>
<td>Home Loans Direct Funding PLC</td>
</tr>
<tr>
<td>Household Mortgage Corporation PLC</td>
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<tr>
<td>Ipswich Mortgage Services Limited</td>
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<tr>
<td>LBS Mortgages Limited</td>
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<tr>
<td>Leamington Mortgage Corporation Limited</td>
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<tr>
<td>Leeds &amp; Holbeck Mortgage Corporation Limited</td>
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<tr>
<td>Leeds &amp; Holbeck Mortgage Funding Limited</td>
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<td>Legal and General Mortgage Services Limited</td>
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<td>Lombard Home Loans Limited</td>
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<tr>
<td>London and Manchester (Mortgages) (No. 1) Limited</td>
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<td>London and Manchester (Mortgages) (No. 2) Limited</td>
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<td>London and Manchester (Mortgages) (No. 3) Limited</td>
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<td>London and Manchester (Mortgages) (No. 4) Limited</td>
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<td>London and Manchester (Mortgages) (No. 5) Limited</td>
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<tr>
<td>Market Harborough Mortgages Limited</td>
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<tr>
<td>The Mortgage Corporation Limited</td>
</tr>
<tr>
<td>The National Home Loans Corporation plc</td>
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<tr>
<td>National Mutual Home Loans plc</td>
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<tr>
<td>National Westminster Home Loans Limited</td>
</tr>
</tbody>
</table>
1.4 Exemption for high net worth borrowers and hirers and exemption relating to businesses

Exemption for high net worth borrowers and hirers

App 1.4.1 R (1) For the purposes of articles 60H(1)(c) and 60Q(b) of the Regulated Activities Order and of CONC 1.2.10R(2), a declaration made by the borrower or hirer which provides that the borrower or hirer agrees to forgo the protection and remedies that would be available to the borrower or hirer if the agreement were a regulated credit agreement or a regulated consumer hire agreement must comply with CONC App 1.4.2R and either CONC App 1.4.6R or, in the case of an MCD article 3(1)(b) credit agreement, CONC App 1.4.6AR.

(2) For the purposes of articles 60H(1)(d) and 60Q(c) of the Regulated Activities Order and of CONC 1.2.10R(2), a statement in relation to the income or assets of the borrower or hirer (referred to in this section as a statement of high net worth) must comply with CONC App 1.4.3 R, CONC App 1.4.4 R and CONC App 1.4.7 R.

(3) For the purposes of articles 60H(1)(e) and 60Q(d) of the Regulated Activities Order and of CONC 1.2.10R(2), the statement in (2) must be made during the period of one year ending with the day on which the agreement was made.

App 1.4.2 R A declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the Regulated Activities Order and of CONC 1.2.10R(2) shall
(1) be set out in the credit agreement or consumer hire agreement no less prominently than other information in the agreement and be readily distinguishable from the background medium; and

(2) be signed by the borrower or hirer, unless the agreement is so signed.

App 1.4.3 R

(1) Subject to CONC App 1.4.4 R, a statement of high net worth shall be signed by

(a) the lender or owner; or

(b) an accountant who is a member of any of the bodies listed in (2).

(2) The bodies referred to in (1)(b) are:

(a) the Institute of Chartered Accountants in England and Wales;
(b) the Institute of Chartered Accountants of Scotland;
(c) the Institute of Chartered Accounts in Ireland;
(d) the Association of Chartered Certified Accountants;
(e) the Chartered Institute of Management Accountants;
(f) the Chartered Institute of Public Finance and Accountancy;
(fa) the Association of International Accountants;
(fb) the Association of Accounting Technicians; and
(g) a professional body for accountants established in a jurisdiction outside the United Kingdom.

App 1.4.4 R

A person who is

(1) the lender or owner;

(2) an employee or agent of the lender or owner or a person who otherwise acts on behalf of the lender or owner in relation to the credit agreement or consumer hire agreement; or

(3) an associate of the lender or owner,

may only make a statement of high net worth if the lender or owner is a person who has Part 4A permission to accept deposits.

Declaration for exemption relating to businesses

A declaration for the purposes of articles 60C or 60O of the Regulated Activities Order shall

(1) comply with CONC App 1.4.8 R;

(2) be set out in the credit agreement or consumer hire agreement no less prominently than other information in the agreement and be readily distinguishable from the background medium; and

(3) be signed by the borrower or hirer or where the borrower or hirer is a partnership or unincorporated body of persons be signed by, or on behalf of, the borrower or hirer, unless the agreement is so signed.
Declaration by high net worth borrower or hirer

The declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the Regulated Activities Order must have the following form and content-

“Declaration by high net worth borrower or hirer

(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of article 60H(1)(d) or article 60Q(c) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

I understand that by making this declaration I will not have the protection and remedies that would be available to me under the Financial Services and Markets Act 2000 or the Consumer Credit Act 1974 if this agreement were a regulated agreement under those Acts.

I understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the lender and the borrower is unfair to the borrower.*

I am aware that if I am in any doubt as to the consequences of making this declaration then I should seek independent legal advice.

*This section should be omitted in the case of a consumer hire agreement

Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement

The declaration for the purposes of article 60H(1)(c) of the Regulated Activities Order and of CONC 1.2.10R(2) must have the following form and content-

“Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement

(article 60H(1)(c) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of article 60H(1)(d) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under

(a) the Financial Services and Markets Act 2000, except for those that transpose or implement the Mortgage Credit Directive, Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, or

(b) the Consumer Credit Act 1974,

if this were a regulated agreement under those Acts.

I understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the lender and the borrower is unfair to the lender.

I am aware that if I am in any doubt as to the consequences of making this declaration then I should seek independent legal advice.”
Statement of high net worth

A statement of high net worth for the purposes of articles 60H(1)(d) and 60Q(c) of the Regulated Activities Order must have the following form and content:

“Statement of High Net Worth

(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I/We* (insert full name) .............................................................. of (insert address and postcode).............................................................. confirm that I am/we* are a person qualified to make a statement of high net worth under rules made by the Financial Conduct Authority, by virtue of the fact that ..............................................................

In my/our* opinion (insert full name of borrower or hirer)

..............................................................

of (insert address and post code of borrower or hirer)

..............................................................

..............................................................

is an individual of high net worth because he/she*

(a) received during the previous financial year net income totalling an amount of not less than £150,000*; and/or

(b) had throughout that year net assets with a total value of not less than £500,000*.

(insert one of the following declarations as appropriate)

I/We* declare that I am/we are* not connected to [insert name of the lender(s)/owner(s)][any person who is a lender/owner offering credit agreements/consumer hire agreements*].

I/We* declare that I am/we are* [connected to] [insert name of lender(s)/owner(s)] as I am/we are* [the lender(s)/owner(s)/an employee of/an agent of the lender(s)//owner(s)/a person who otherwise acts on behalf of the lender(s)//owner(s) in relation to the credit agreement/consumer hire agreement/an associate of the lender(s)//owner(s)].*

I/we declare that I am/we are*/[a/an] lender(s)/owner(s) offering credit agreements/consumer hire agreements/ an employee of/an agent of/a person who otherwise acts on behalf of/ an associate of lender(s)/owner(s) offering credit agreements/ consumer hire agreements.*

In this statement-

(a) “associate” shall be construed in accordance with article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

(b) “financial year” means a period of one year ending with 31st March;

(c) “net assets” shall not include -
(i) the value of the borrower’s or hirer’s primary residence or any loan secured on that residence;

(ii) any rights of the borrower or hirer under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and

(iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the borrower or hirer or on his retirement and to which he is (or his dependents are), or may be, entitled.

(d) “net income” means the total income of the borrower or hirer from all sources reduced by the amount of income tax and national insurance contributions payable in respect of it; and

(e) “previous financial year” means the financial year immediately preceding the financial year during which the statement is made”.

*Delete as appropriate.

Declaration for exemption relating to businesses

A declaration for the purposes of articles 60C or 60O of the Regulated Activities Order must have the following form and content

“Declaration for exemption relating to businesses
(articles 60C and 60O of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I am/We are* entering this agreement wholly or predominantly for the purposes of a business carried on by me/us or intended to be carried on by me/us.

I/We* understand that I/We* will not have the benefit of the protection and remedies that would be available to me/us* under the Financial Services and Markets Act 2000 or under the Consumer Credit Act 1974 if this agreement were a regulated agreement under those Acts.

I/We* understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the lender and the borrower is unfair to the borrower.**

I am/We are aware that, if I am/we are in any doubts as to the consequences of the agreement not being regulated by the Financial Services and Markets Act 2000 or the Consumer Credit Act 1974, then I/we* should seek independent legal advice.”.

*Delete as appropriate.

**This section should be omitted in the case of a consumer hire agreement.
### CONC TP 5

**Transitional provisions for prudential provisions in relation to debt management firms**

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<tbody>
<tr>
<td><strong>Material to which the transitional provision applies</strong></td>
<td><strong>Transitional provision</strong></td>
<td><strong>Transitional provision: dates in force</strong></td>
<td><strong>Handbook provision coming into force</strong></td>
<td></td>
</tr>
<tr>
<td>5.1</td>
<td>CONC 10.3.3 R</td>
<td>A firm can calculate its prudential resources without deducting items 2 and 3 in CONC 10.3.3 R</td>
<td>From 1 April 2014 to 31 March 2017</td>
<td>1 April 2014</td>
</tr>
<tr>
<td>5.2</td>
<td>CONC 10.3.5 R</td>
<td>b = items 1, 4 and 5 in the Table of items which must be deducted from a firm’s prudential resources (see CONC 10.3.3 R)</td>
<td>From 1 April 2014 to 31 March 2017</td>
<td>1 April 2014</td>
</tr>
<tr>
<td>5.3</td>
<td>CONC 10.3.6 G</td>
<td>The guidance at CONC 10.3.6 G should be read in the light of TP 5.2</td>
<td>From 1 April 2014 to 31 March 2017</td>
<td>1 April 2014</td>
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</tbody>
</table>
Transitional provisions for prudential provisions in relation to debt management firms
## CONC TP 6
Transitional provisions for financial promotions and communications in relation to catalogues etc.

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<tr>
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<th>(6)</th>
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<tbody>
<tr>
<td>6.1</td>
<td>CONC 3</td>
<td>R</td>
<td>A firm will not contravene a rule in CONC 3 to the extent that a financial promotion or communication referred to in 6.2 would comply, as the case may be, with the Consumer Credit (Advertisements) Regulations 2010 or the Consumer Credit (Advertisements) Regulations 2004 (assuming they had not been repealed by Article 21 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).</td>
<td>From 1 April 2014 to 31 March 2015</td>
<td>1 April 2014</td>
</tr>
<tr>
<td>6.2</td>
<td>R</td>
<td>A financial promotion or a communication first communicated to the public in a catalogue, diary or work of reference comprising at least fifty printed pages copies of which are first communicated before 1 October 2014 and which in a reasonably prominent position either contains the date of its first publication or specifies a period being a calendar or seasonal period throughout which it is intended to have effect.</td>
<td>From 1 April 2014 to 31 March 2015</td>
<td>1 April 2014</td>
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</table>
Transitional provisions for financial promotions and communications in relation to catalogues etc.
# CONC TP 7
Transitional provision in relation to the Consumer Credit (Amendment No 2) Instrument 2015

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<tbody>
<tr>
<td>7.1</td>
<td>CONC</td>
<td>R</td>
<td>[expired]</td>
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</tbody>
</table>

**Consumer Credit (Amendment No 2) Instrument 2015**
## Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018

### CONC TP 7A

**Transitional provisions in relation to the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018**

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</thead>
<tbody>
<tr>
<td>7A.1</td>
<td>CONC 6.7.2R, CONC 6.7.3AR to CONC 6.7.3DR, and CONC 6.7.27R to CONC 6.7.40G</td>
<td>A firm may comply with CONC as if the changes made by the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018 had not been made until (but not including) 1 September 2018. But where a firm elects, in relation to a credit card agreement, to comply before that date with CONC as amended by that Instrument, it must comply with the relevant provisions in full. Consequently, the time periods set out in the rules to which this transitional provision applies are to be determined by reference to the date on which the firm first acted in compliance (or purported compliance) with those rules.</td>
<td>1 March 2018 to 31 August 2018</td>
<td>1 March 2018</td>
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</tbody>
</table>

<p>| 7A.2 | CONC 6.7.27R to CONC 6.7.40G | The effect of TP 7A.1 is that no later than 1 September 2018 firms must start to look back at credit card customers’ repayment records over the preceding 18-month period and identify any customers that fall within the application of CONC 6.7.27R (and must thereafter continue to do so on at least a monthly basis). Firms must then send those customers a communication in accordance | 1 March 2018 to 31 August 2018 | 1 March 2018 |</p>
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2) Material to which the transitional provision applies</th>
<th>(3) Transitional provision</th>
<th>(4) Transitional provision dates in force</th>
<th>(5) Handbook provision: coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>with CONC 6.7.27R(3). Between 9 and 10 months after this communication is required to be sent, CONC 6.7.29R requires firms to take the additional steps set out in that rule with respect to that group of customers. 18 months after this CONC 6.7.27R communication is required to be sent, CONC 6.7.30R to CONC 6.7.40G potentially require the firm to take the further steps described in those rules in relation to that group of customers where CONC 6.7.30R applies. CONC 6.7.30R applies only where the amount that customer has paid to the firm towards the credit card balance, over the 18-month period following the date on which the CONC 6.7.27R communication was triggered, comprises a lower amount in principal than in interest, fees and charges. This means that the earliest date on which a firm may have obligations under CONC 6.7.30R is 1 March 2020 (except as mentioned below). However, firms are not required to delay implementation to the end of the six-month period set out in TP 7A.1: where a firm takes a step in compliance with one of the rules in question before 1 September 2018 in relation to a particular credit card agreement (for example, carrying out the 18-month review), the time for taking all subsequent steps required to be taken under those rules is to be determined by reference to the date of that first</td>
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Transitional provisions in relation to the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018

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<tr>
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<td>step, and not by reference to 1 September 2018 (or some later date).</td>
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</table>
### Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018

#### CONC TP 7B

**Transitional provisions in relation to the Consumer Credit (High-Cost Credit) Instrument 2018**

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<tbody>
<tr>
<td>CONC 6.7.1(4)R, R CONC 6.7.3AR to CONC 6.7.3DG, and CONC 6.7.27R to CONC 6.7.40G</td>
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<td></td>
<td>A <em>firm</em> may comply with CONC as if the changes made by the Consumer Credit (High-Cost Credit) Instrument 2018 had not been made until (but not including) 19 June 2019. But where a <em>firm</em> elects, in relation to retail revolving credit, to comply, before that date, with CONC as amended by that Instrument, it must comply with the relevant provisions in full. Consequently, the time periods set out in the rules to which this transitional provision applies are to be determined by reference to the date on which the <em>firm</em> first acted in compliance (or pur-</td>
<td>19 December 2018 to 18 June 2019</td>
<td>19 December 2018</td>
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<tr>
<td>7B.2</td>
<td>CONC 6.27R to CONC 6.40G</td>
<td>G</td>
<td>PORTED COMPLIANCE) WITH THOSE RULES.</td>
<td>The effect of TP 7B.1 is that no later than 19 June 2019 firms must start to look back at the repayment records for retail revolving credit customers over the preceding 18-month period and identify any customers that fall within the application of CONC 6.7.27R (and must thereafter continue to do so on at least a monthly basis). Firms must then send those customers a communication in accordance with CONC 6.7.27R(3). Between 9 and 10 months after this communication is required to be sent, CONC 7.7.29R requires firms to take the additional steps set out in that rule with respect to that group of customers. 18 months after the CONC 6.7.27R communication is required to be sent, CONC</td>
<td>19 December 2018 to 18 June 2019</td>
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<tr>
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<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
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</table>
| 6.7.30R to CONC 6.7.40G potentially require the firm to take the further steps described in those rules in relation to that group of customers where CONC 6.7.30R applies. CONC 6.7.30R applies only where the amount that customer has paid to the firm towards the balance on the retail revolving credit account, over the 18-month period following the date on which the CONC 6.7.27R communicated was triggered, comprises a lower amount in principal than in interest, fees and charges. This means that the earliest date on which a firm may have obligations under CONC 6.7.30R is 19 December 2020 (except as mentioned below). However, firms are not required to delay implementation to the end of the 6-month period set out in TP 7B.1: where a firm takes a step in...
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<td>Handbook provision: coming into force</td>
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</table>

compliance with one of the rules in question before 19 June 2019 in relation to a particular retail revolving credit agreement (for example, carrying out the 18-month review), the time for taking subsequent steps required to be taken under those rules is to be determined by reference to the date of that first step, and not by reference to 19 June 2019 (or some later date).
### CONC TP 8
Other transitional provisions

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<tr>
<td>1</td>
<td>CONC R 2.2.6R(1) to (3)</td>
<td>A firm need not comply with CONC 2.2.6R(1) to (3) in relation to an automatic renewal of an agreement for an optional additional product which was entered into on or before 31 March 2016 provided:</td>
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</tbody>
</table>

1. the automatic renewal of the agreement is on substantially the same terms. The phrase “on substantially the same terms” is to be interpreted in the same way as in CONC 2.2.6R(11)(b) and (c)

2. on the occasion of the first automatic renewal on or after 1 April 2016, the firm takes reasonable steps to ensure that the customer is informed:

   a. that the renewal of the agreement is optional;
   b. that the customer may elect not to renew the agreement; and
   c. of the effect of the non-renewal of the agreement, if any, on the service the provision of which constitutes the carrying on of a credit-related regulated activity; and

3. the procedure to be used by customers for electing not to renew the agreement pays due regard to the interests of customers and treats them fairly. |

From 1 April 2016 | On 1 April 2016
## Consumer Credit sourcebook

### Schedule 1

**Record keeping requirements**

**Sch 1**

1.1 **G** The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements in CONC.

1.2 **G** It is not a complete statement of those requirements and should not be relied on as if it were.

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4.3R(6)(a)</td>
<td>Information notice</td>
<td>A copy of the notice, and details of the date on which and the manner by which it was sent</td>
<td>When the notice is sent</td>
<td>18 months from the date on which the notice is sent</td>
</tr>
<tr>
<td>4.4.3R(6)(b)</td>
<td>Customer confirmation</td>
<td>A copy of the confirmation, and details of the date on which and the manner by which it was received</td>
<td>When the confirmation is received</td>
<td>18 months from the date on which the confirmation is received</td>
</tr>
<tr>
<td>6.6.3R</td>
<td>Actions concerning articles taken in <em>pawn</em>.</td>
<td>Specified details concerning taking articles in <em>pawn</em>, redemption and sale of articles in <em>pawn</em>.</td>
<td>Date of event referred to in section.</td>
<td>At least the longer of 5 years from the date on which an article is taken in <em>pawn</em> or 3 years from date of sale under section 121(1) of the CCA or the redemption of the article as the case may be.</td>
</tr>
<tr>
<td>7.13.2R</td>
<td>An <em>individual</em> who is, or is treated as, a <em>borrower</em> under a credit agree-</td>
<td>Accurate and adequate data (including in respect of debt and repayment</td>
<td>When a <em>firm</em> is notified in relation to an <em>individual</em> whom it is to pursue for</td>
<td>Not specified.</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>-------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>7.13.7R</td>
<td>An individual not being the borrower under a credit agreement or consumer hire agreement.</td>
<td>Record that the individual is not the borrower and should not be pursued for debt.</td>
<td>Date on which the firm is aware of true state of affairs.</td>
<td>Not specified.</td>
</tr>
<tr>
<td>8.3.4AR(2)</td>
<td>The grounds for being satisfied that the firm is unlikely to enter into a contract with a customer.</td>
<td>The grounds for being satisfied that the firm is unlikely to enter into a contract with a customer.</td>
<td>When the firm becomes satisfied that it is unlikely to enter into a contract with the customer.</td>
<td>Not specified.</td>
</tr>
<tr>
<td>8.8.1R(9)</td>
<td>Record of debt management plans entered into with customers.</td>
<td>An adequate record.</td>
<td>When the firm enters into debt management plan.</td>
<td>Until the contract between the customer and the firm is completed or terminated.</td>
</tr>
<tr>
<td>11.1.9R</td>
<td>Exercise of right to cancel under CONC 11.1.1 R.</td>
<td>Adequate record of use of right to cancel by consumer.</td>
<td>Date of exercise.</td>
<td>3 years.</td>
</tr>
</tbody>
</table>
### Consumer Credit sourcebook

**Schedule 2**

Notification and reporting requirements (if any)

---

<table>
<thead>
<tr>
<th>Sch 2</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Handbook reference</strong></td>
<td><strong>Matter to be notified</strong></td>
<td><strong>Contents of notification</strong></td>
<td><strong>Trigger event</strong></td>
</tr>
<tr>
<td>G CONC 10.2.14 R</td>
<td>Any change in a <em>firm’s</em> prudential resources requirement</td>
<td>The changed prudential resources requirement</td>
<td>The change in the <em>firm’s</em> prudential resources requirement</td>
</tr>
</tbody>
</table>
Schedule 2
Notification and reporting requirements (if any)
Consumer Credit sourcebook

Schedule 3
Fees and other required payment

Sch 3
Not used
Consumer Credit sourcebook

Schedule 4
Not used

Sch 4
Not used
Consumer Credit sourcebook

Schedule 5
Rights of action for damages

Sch 5

Sch 5.1 G The table below sets out the rules in CONC contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person 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 rule may be actionable by a "private person" 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 FCA has removed the right of action under section 138D(2) of the Act. If so, a reference to the rule in which it is removed is also given.

Sch 5.3 G The column headed "For other person?" indicates whether the rule may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the rule may be actionable is given.

<table>
<thead>
<tr>
<th>Chapter/ Appendix</th>
<th>Section/ Annex</th>
<th>Paragraph</th>
<th>Right of action under section 138D</th>
</tr>
</thead>
<tbody>
<tr>
<td>The clear, fair and not misleading rule in CONC 3.3.1 R</td>
<td></td>
<td>For private person?</td>
<td>Removed?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yes (Notes 2 &amp; 3)</td>
<td>In part (Note 1)</td>
</tr>
<tr>
<td>The prudential rules for debt management firms and not-for-profit debt advice bodies in CONC 10</td>
<td></td>
<td>No</td>
<td>Yes, CONC 10.1.6 R</td>
</tr>
<tr>
<td>All other rules in CONC</td>
<td></td>
<td>Yes (Notes 2 &amp; 3)</td>
<td>No</td>
</tr>
</tbody>
</table>

Notes
(1) CONC 3.3.1 R (2) provides that if, in relation to a particular communication or financial promotion, a firm takes reasonable steps to ensure it complies with the clear, fair and not misleading rule, 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 Regulated Activities Order 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".
(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.
As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its rules, other than rules made under section 1370 (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FCA to grant a waiver that would be incompatible with the UK’s responsibilities under those directives.