

## Chapter 1

# Application and purpose and guidance on financial difficulties

## 1.1 Application and purpose

### Application

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- (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.

### Purpose

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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.

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*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.

### The Principles for Businesses: a reminder

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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 **R** 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 **R** 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**

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- (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 **G** 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 **R** *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

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- (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

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- (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):
  - (a) 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
  - (b) 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

60C(3) of the *Regulated Activities Order*; article 36A(4)(a) of the *Regulated Activities Order* disregards that exemption.

**Application to MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries**

1.2.8

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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).

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*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

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- (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*]

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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*.

## 1.3 Guidance on financial difficulties

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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*.