

Chapter 15

Agreements secured on land



15.1 Application

- 15.1.1** **R** 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*.
- 15.1.2** **G** *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**
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- 15.1.3** **G** 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.
- 15.1.4** **R** 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*.
- 15.1.5** **R** 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.

15.1.6 G Where appropriate, the disclosure required by ■ CONC 15.1.5 R should be explained orally to the *customer*.

15.1.7 R 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.

15.1.8 R 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.

15.1.9 G 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 **G** 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 **R** 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 **R** 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 **R** 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 **G** [deleted]

15.1.15 **R** 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.