Chapter 2

Conduct of business standards: general
2.1 Application

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

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

General principles

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

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]

(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
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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
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2.2.5  R

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

General conduct

2.3.2 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 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 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 (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

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.

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 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**

2.5.9

(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.
(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 6.19f 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.

2.5.10 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;
2.5.11 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.
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.

2.5A.6 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.

2.5A.7 (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;
(c) make a visit which is unreasonably or unnecessarily long;

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

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.

(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 n 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 n 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.

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

2.7.3 R 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.

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

[Note: article 3(2) of the Distance Marketing Directive]

2.7.4 R 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.

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

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

2.7.5 R 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.

[Note: regulation 7(5) of SI 2004/2095]

[Note: article 3(4) of the Distance Marketing Directive]
## Terms and conditions, and form

### 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 2013/3134](#)) 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.

### Commencing performance of the distance contract

### 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*]

### Exception: successive operations

### 2.7.9

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

2.7.11 R

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

2.7.12 R

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

2.7.13 G

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 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 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 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]
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.

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

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 R This section applies to any firm.

Prohibition

2.9.2 R (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 G [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.

2.10.2 (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
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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 2.10.6, this does not necessarily mean that the customer does not have the mental capacity to make an informed borrowing decision. See also 2.10.15.

[Note: paragraph 2.10 of MCG]

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

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 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]

2.10.10 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]

2.10.11 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 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 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 activity.
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 R

(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 G

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
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(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 [G] 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 [G] 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**

1. The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the consumer's relations with the *firm*.
2. Where the *firm* has a representative established in the consumer's *EEA State* of residence, the name of that representative and the geographical address relevant for the consumer's relations with that representative.
3. Where the consumer's dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the consumer, and the geographical address relevant to the consumer's relations with that professional.
4. The particulars of the public register in which the *firm* is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (**GEN 4**), a statement that the *firm* is on the Financial Services Register and its firm reference number.

**Information about the financial service**

5. A description of the main characteristics of the service the *firm* will provide.
6. The total price to be paid by the consumer to the *firm* for the financial service, including all related fees, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it.
7. 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 firm's control and that past performance is no indicator of future performance.
8. Notice of the possibility that other taxes or costs may exist that are not paid via the *firm* or imposed by it.
9. Any limitations on the period for which the information provided is valid, including a clear explanation as to how long the *firm*'s offer applies as it stands.
10. The arrangements for payment and performance.
11. Details of any specific additional cost to the consumer for using a means of distance communication.

**Information about the contract**

12. The existence or absence of any right to cancel under section 66A or 67 of the CCA or the cancellation **rules** 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 consumer may be required to pay (or which may not be returned to the consumer) in accordance with those provisions or rules, as well as the consequences of not exercising the right to cancel.
13. The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
14. 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.
(15) Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.

(16) 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.

(17) Any contractual clause on the law applicable to the contract or on the competent court, or both.

(18) 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.

Information about redress

(19) 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.

(20) Whether compensation may be available from the compensation scheme, or any other named compensation scheme, if the firm is unable to meet its liabilities.

[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.

1. The identity of the person in contact with the consumer and his link with the firm.
2. A description of the main characteristics of the financial service.
3. 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.
4. Notice of the possibility that other taxes and/or costs may exist that are not paid via the firm or imposed by the firm.
5. 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.
6. That other information is available on request and the nature of that information

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