

## Chapter 2

# Conduct of business standards: general

## 2.2 General principles for credit-related regulated activities

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

### General principles

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

2.2.5

**R**

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

2.2.6

**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*.

2.2.7

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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** **G** *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** **G** *Firms* are reminded of the guidance on appointed representatives set out in ■ CONC 1.2.3G.