

Chapter 3

Financial promotions and communications with customers

3.10 Financial promotions not in writing

Application

3.10.1

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This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending, credit broking, debt counselling, debt adjusting, operating an electronic system in relation to lending* in relation to prospective *borrowers* or *borrowers* under *P2P agreements*;
- (2) in relation to the communication of a *financial promotion* that is not in writing.

Promotions that are not in writing

3.10.2

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

- (1) only does so at an appropriate time of the day; and
- (2) identifies that *person* and the *firm* represented at the outset and makes clear the purpose of the communication.

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

3.10.3

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Firms should note that:

- (1) section 49 of the *CCA* makes it a criminal offence to canvass *borrower-lender agreements*, for example cash loans, off trade premises (within the meaning of section 48 of the *CCA*); and
- (2) section 154 of the *CCA* makes it a criminal offence to canvass off trade premises *credit broking* of a kind specified by article 36A(1)(a) to (c) of the *Regulated Activities Order, debt adjusting, debt counselling* or *providing credit information services* (within the meaning of section 153 of the *CCA*).
- (3) The *FCA* takes the view that sections 48 and 49 of the *CCA* mean that any discussions about new borrowing or refinancing with a *customer* that take place in the *borrower's* home must be initiated by the *borrower*, either in the form of a specific written request or, only where the *individual* is in the *borrower's* home other than for the purpose of engaging in such discussion, in the form of an oral invitation.

- (4) The FCA has considered the potential for the use of “umbrella requests to visit”. “Umbrella requests” or “permissions to call” tend to be signed by a *borrower* when entering into a *borrower-lender agreement* (or shortly after) and purport to allow the *lender* to visit the *borrower’s* home to discuss other borrowing at any time, over the duration of the agreement or beyond. The FCA takes the view that such “umbrella requests” do not meet the requirements of the CCA. “Umbrella requests” create open-ended opportunities for *firms* to raise the prospect of additional borrowing, without the *borrower* having specifically requested or even considered it.
- (5) A valid request is one made on the instigation of the *borrower* when the *borrower* wants to discuss a *borrower-lender agreement*. The FCA would expect to see the following for a *firm* to comply with sections 48 and 49 of the CCA:
 - (a) the request should be a positive act by the *borrower* taken specifically for the purpose of discussing other borrowing;
 - (b) the visit should be made in response to that request. Where a request is reasonably specific on timing, the visit should be within that timing. Where the request is not reasonably specific on timing, any visit should take place within a reasonable proximity to that request for it to be clear that the visit is being made in response to that request; and
 - (c) there should be a separate request made for each agreement or contractual variation.
- (6) In the FCA’s view this would not stop an agent or representative of a *firm* who has called on a *borrower* with the sole purpose of collecting on an existing loan from discussing new or additional borrowing if the *borrower* asks them to do so during the collection visit. However, if the agent or representative raised the topic of new or additional finance, we consider it would be very difficult for them to establish that they had not visited with that purpose.
- (7) We expect that *firms* should be able to rely on their existing procedures for receiving written requests from new *customers* in relation to existing *borrowers*.

Failure to comply

3.10.4

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Failure to comply with section 49 of the CCA is a criminal offence. Only a court can determine the meaning of sections 48 and 49 of the CCA.