

Chapter 3

Financial promotions and communications with customers

3.3 The clear fair and not misleading rule and general requirements

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- (1) A *firm* must ensure that a communication or a *financial promotion* is clear, fair, and not misleading.

[Note: paragraphs 2.2 of *ILG*, 3.16 of *DMG* and 3.1 of *CBG*]

- (1A) A *firm* must ensure that each communication and each *financial promotion*:

- (a) is clearly identifiable as such;
- (b) is accurate;
- (c) is balanced and, in particular, does not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;
- (d) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to which it is directed, or by which it is likely to be received; and
- (e) does not disguise, omit, diminish or obscure important information, statements or warnings.

- (1B) A *firm* must ensure that, where a communication or *financial promotion* contains a comparison or contrast, the comparison or contrast is presented in a fair and balanced way and is meaningful.

- (2) If, for a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with (1), (1A) and (1B), a contravention does not give rise to a right of action under section 138D of the Act.

General requirements

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A *firm* must ensure that a communication or a *financial promotion*:

- (1) uses plain and intelligible language;
- (2) is easily legible (or, in the case of any information given orally, clearly audible);
- (3) specifies the name of the *person* making the communication or *communicating* the *financial promotion* or the *person* on whose behalf the *financial promotion* is made; and

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- (4) in the case of a communication or *financial promotion* in relation to *credit broking*, specifies the name of the *lender* (where it is known).

[Note: paragraph 4.8a of CBG]

[Note: regulation 3 of CCAR 2004 and regulation 3 of CCAR 2010]

- (1) A *firm* must not in a *financial promotion* or a communication to a *customer* state or imply that *credit* is available regardless of the *customer's* financial circumstances or status.

[Note: paragraphs 3.7o of CBG and 5.2 of ILG]

- (2) This *rule* does not apply to a *financial promotion* or communication relating to a *credit agreement* under which a *person* takes an article in *pawn* and the *customer's* total financial liability (including capital, interest and all other charges) is limited under the agreement to the proceeds of sale which would represent the true market value (within the meaning of section 121 of the CCA) of the article or articles *pawned* by the *customer*.

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- (1) A *firm's* trading name, internet address or logo, in particular, could fall within ■ CONC 3.3.3 R.

[Note: paragraph 5.2 (box) of ILG]

- (2) A statement or an implication that *credit* is guaranteed or pre-approved, or is not subject to any *credit* checks or other assessment of creditworthiness, may contravene ■ CONC 3.3.3R. *Firms* are reminded of the requirements of ■ CONC 5 (Responsible lending).

Guidance on clear, fair and not misleading

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If a communication or a *financial promotion* names the *FCA*, *PRA* or both as the regulator of a *firm* and refers to matters not regulated by the *FCA*, *PRA* or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FCA*, *PRA* or both.

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When *communicating* information, a *firm* should consider whether omission of any relevant fact will result in information given to the *customer* being insufficient, unclear, unfair or misleading.

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A comparison or contrast to which ■ CONC 3.3.1R(1B) applies may be a comparison or contrast with another *person*, or with another product or service, whether offered by the *firm* or by another *person*.

3.3.9 G A *firm* should in a *financial promotion* or other communication which includes a premium rate telephone number indicate in a prominent way the likely total cost of a premium rate call including the price per minute of a call, the likely duration of calls and the total cost a *customer* would incur if the *customer* calls for the full estimated duration. *Firms* should note the effect of the *call charges rule* in ■ GEN 7.

[Note: paragraphs 3.9h of *CBG* and 3.18x (box) of *DMG*]

3.3.9A G A *firm* is reminded of its obligations under ■ ESG 4.3.1R when it communicates or approves a *financial promotion* that references the sustainability characteristics of a product or service.

Unfair business practices: financial promotions and communications

3.3.10 G Examples of practices that are likely to contravene the clear, fair and not misleading rule in ■ CONC 3.3.1 R include:

(1) stating or implying that a *firm* is a *lender* (where this is not the case);

[Note: paragraph 3.7e (box) of *CBG*]

(2) misleading a *customer* as to the availability of a particular *credit* product;

[Note: paragraph 3.9p of *CBG*]

(3) concealing or misrepresenting the identity or name of the *firm*;

[Note: paragraph 3.7g (box) of *CBG*]

(4) using false testimonials, endorsements or case studies;

[Note: paragraph 3.18s of *DMG*]

(5) using false or unsubstantiated claims as to the *firm's* size or experience or pre-eminence;

[Note: paragraph 3.18t of *DMG*]

(6) in relation to *debt solutions*, claiming or implying that a *customer* will be free of debt in a specified period of time or making statements emphasising a debt-free life or that a *debt solution* is a stress free or immediate solution;

[Note: paragraphs 3.18u and 3.18v of *DMG*]

(7) providing online tools, which recommend a particular *debt solution* as suitable for a *customer*, such as, budget calculators or advice websites:

(a) which do not carry out a sufficiently full assessment of a *customer's* financial position; or

(b) which fail to provide clear warnings to a *customer* that financial data entered into a tool has to be accurate;

[Note: paragraph 3.20c of *DMG*]

- (8) emphasising any savings available to a *customer* by proposing to reschedule a *customer's* debts, without explaining that a *lender* is not obliged to accept less in settlement of the *customer's* debts than it is entitled to, nor to freeze interest and charges and that the result may be to increase the *total amount payable* or the period over which it is to be paid and to impair the *customer's* credit rating;

[Note: paragraph 3.18l of *DMG*]

- (9) suggesting that a *customer's repayments* will be lower under a proposed agreement without also mentioning (where applicable) that the duration of the agreement will be longer or that the *total amount payable* will be higher.

[Note: paragraph 5.13 of *ILG*]

Guidance on misleading introductions

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Misleading a *customer* as to the availability of a particular *credit* product is likely to include stating or implying that the *firm* will introduce the *customer* to a provider of a standard personal loan based on repayment by instalments or of an overdraft facility on a current account (for example, a bank or building society) or of a credit card, but instead introducing the *customer* to a provider of *high-cost short-term credit*.

[Note: paragraph 3.9p (box) of *CBG*]

“Buy now pay later” or similar offers

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- (1) *Firms* are reminded that the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), as well as *Principle 7* and ■ **CONC 3.3.1R**, apply to communications and *financial promotions* in relation to *BNPL agreements*, including communications with *borrowers* under existing agreements.
- (2) A communication or *financial promotion* in relation to a *BNPL agreement* is likely to be misleading by omission if it:
 - (a) refers to a zero percentage or low interest, introductory or other promotional offer available under a *BNPL agreement*;
 - (b) does so in a way that is likely to influence a *customer's* decision about whether to enter into a *BNPL agreement* or whether and how to make use of *credit* available under an existing *BNPL agreement*; and
 - (c) does not also include in a fair and prominent manner material information about relevant risks.
- (3) A *firm* should also consider whether other communications or *financial promotions* in connection with *BNPL agreements* could be misleading by omission if those communications or *financial promotions* do not also include in a fair and prominent manner material information about relevant risks.

- (4) Relevant risks relating to *BNPL credit* include the limitations that apply to any zero percentage or low interest, introductory or other FCA 2019/72 Page 4 of 6 promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of that interest or those charges and the amount of principal on which the interest would be charged. The average *consumer* is likely to need information about these matters to make an informed decision about whether to enter into a *BNPL agreement*, or whether and how to make use of *credit* available under an existing *BNPL agreement*.
- (5) The information that a communication or *financial promotion* about a *BNPL agreement* is required to include to avoid a misleading effect, and how that information should be presented, will depend on the context of the communication or *financial promotion*, including its medium and any other information that the *firm* has provided to the recipient.

Non-business overdraft agreements

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A communication or a *financial promotion* that refers to sums available by way of an *authorised non-business overdraft agreement* should make clear that such sums constitute borrowing or credit.