

Chapter 3

Financial promotions and communications with customers

3.5 Financial promotions about credit
agreements not secured on land

Application

3.5.1

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This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending*;
- (2) to a *financial promotion* in relation to *credit broking* in relation to *regulated credit agreements*;
- (3) to a *financial promotion* in relation to activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to what would be *regulated credit agreements* but for a relevant provision, but only where the *firm* also carries on such activities in relation to *regulated credit agreements*;

and in each case, other than to *financial promotions* to the extent that they relate to agreements secured on *land*.

Prohibition on financial promotion where goods etc. not sold
for cash

3.5.2

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A *financial promotion* must not be *communicated* where it indicates a *firm* is willing to provide *credit* under a regulated *restricted-use credit agreement* relating to *goods* or services to be supplied by any *person*, when at the time the *financial promotion* is *communicated*, the *firm* or any *supplier* under such an agreement does not hold itself out as prepared to sell the *goods* or provide the services (as the case may be) for cash.

[Note: section 45 of CCA]

Content of financial promotions

3.5.3

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- (1) Where a *financial promotion* indicates a rate of interest or an amount relating to the *cost of credit* whether expressed as a sum of money or a proportion of a specified amount, the *financial promotion* must also:
 - (a) include a representative example in accordance with
■ CONC 3.5.5 R, and
 - (b) specify a postal address at which the *person* making the *financial promotion* may be contacted.

[Note: regulation 4(1) of CCAR 2010]

- (2) Paragraph (1)(a) does not apply where the *financial promotion*:
- (a) falls within ■ CONC 3.5.7 R; and
 - (b) does not indicate a rate of interest or an amount relating to the *cost of credit* other than the *representative APR*.

[Note: regulation 4(2) of CCAR 2010]

Paragraph (1)(a) also does not apply where the *financial promotion* relates only to *credit agreements* in respect of which the *APR* is 0%.

- (3) Paragraph (1)(b) does not apply to *financial promotions*:
- (a) communicated by means of television or radio broadcast; or
 - (b) in any form on the premises of a *dealer* or *lender*, other than *financial promotions* in writing which *customers* are intended to take away; or
 - (c) which include the name and address of a *dealer*; or
 - (d) which include the name and postal address of a *credit broker*.

[Note: regulation 4(1)b of CCAR 2010]

Guidance on showing interest rates and cost of credit

3.5.4

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- (1) A rate of interest for the purpose of ■ CONC 3.5.3R (1) is not limited to an annual rate of interest but would include a *monthly* or daily rate or an *APR*. It would also include reference to 0% credit (but where the *APR* is 0% and ■ CONC 3.5.3R(2A) applies, a representative example is not required). An amount relating to the *cost of credit* would include the amount of any fee or charge, or any *repayment of credit* (where it includes interest or other charges).

[Note: paragraph 6.7 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (2) If a *rule* in ■ CONC 3.5 applies to a rate of interest or a charge, and the rate or charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

Representative example

3.5.5

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- (1) The representative example in ■ CONC 3.5.3R (1) must comprise the following items of information:
- (a) the rate of interest, and whether it is fixed or variable or both, expressed as a fixed or variable percentage applied on an annual basis to the amount of *credit* drawn down;
 - (b) the nature and amount of any other charge included in the *total charge for credit*;
 - (c) the *total amount of credit*;
 - (d) the *representative APR*;

- (e) in the case of *credit* in the form of a deferred payment for specific *goods, services, land* or other things, the *cash price* and the amount of any *advance payment*;
- (f) the duration of the agreement;
- (g) the *total amount payable*; and
- (h) the amount of each *repayment of credit*.

[Note: regulation 5(1) of CCAR 2010]

[Note: article 4 of the *Consumer Credit Directive*]

- (2) The items of information required by (1)(a), (b), (c), (e), (f) and (g) must be those which the *firm communicating or approving the financial promotion* 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.

[Note: regulation 5(2) of CCAR 2010]

- (3) For (1)(e), the reference in (2) to “*credit agreements* to which the *representative APR* applies” is to agreements providing *credit* for the purchase of specific *goods, services, land* or other things, to which the *representative APR* applies.

[Note: regulation 5(3) of CCAR 2010]

- (4) For the purposes of (1)(a), where the *credit agreement* provides for different ways of drawdown with different rates of interest, the rate of interest shall be assumed to be the highest rate applied to the most common drawdown mechanism for the product to which the agreement relates.

[Note: regulation 5(4) of CCAR 2010]

- (5) The information required by (1) must be:
 - (a) specified in a clear, concise and prominent way;
 - (b) accompanied by the words “representative example”;
 - (c) presented together with each item of information being given equal prominence; and
 - (d) given no less prominence than:
 - (i) any other information relating to the *cost of credit* in the *financial promotion*, except for any statement relating to an obligation to enter into a contract for an *ancillary service* referred to in ■ CONC 3.5.10 R; and
 - (ii) any indication or incentive of a kind referred to in ■ CONC 3.5.7 R.

[Note: regulation 5(6) of CCAR 2010]

- (6) A *financial promotion* for a *credit agreement* with no fixed duration is not required to include the duration of the agreement or the *total amount payable* or the amount of each *repayment of credit*.

[Note: regulation 5(1)f of CCAR 2010]

- (7) A financial promotion for an authorised non-business overdraft agreement provided by a firm of a type listed in ■ CONC 5C.1.2R(2) is not required to include a representative APR.

[Note: regulation 5(5) of CCAR 2010]

Guidance on the representative example

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- (1) The representative example in ■ CONC 3.5.5 R should not be limited to being representative of agreements featured in the *financial promotion* if the *firm communicating or approving the financial promotion* expects other agreements to be entered into as a result of the *financial promotion*, whether with the *firm* or with a third party.

[Note: paragraph 6.8 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (1A) Firms are referred to the *Glossary* definition of *representative APR* and reminded that they should consider the agreements which they reasonably expect to be entered into (whether by the *firm* or by another *person*) as a result of the *financial promotion*, and ensure that the 51% test in that definition takes account of the *APR* of each of those agreements. The representative example in ■ CONC 3.5.5R should be representative of agreements to which the *representative APR* applies.
- (1B) The example referred to in (1) is unlikely to be representative if, for example, most *customers* entering into agreements as a result of the *financial promotion* are likely to do so for a lower amount of *credit* than that indicated in the example, or with higher rates of interest or other charges than those indicated in the example.
- (1C) (a) The *guidance* in this provision is relevant to the calculation of an *APR* for an authorised non-business overdraft agreement which is a necessary first step when calculating the *representative APR* in a *financial promotion* for the authorised non-business overdraft agreement. It is, therefore, also relevant to the calculation of the *representative APR* in a *financial promotion* for an authorised non-business overdraft agreement.
- (b) This *guidance* relates to a situation where the terms and conditions that apply to an authorised non-business overdraft agreement provide that no interest or other charges are payable in relation to a drawing (authorised in advance) up to a specified amount (including in circumstances where the drawdown exceeds the specified amount). This is sometimes referred to as a “fee-free amount”.
- (c) Firms are reminded that ■ CONC 5C.2.1R(7) prohibits certain types of fee-free amounts in relation to overdrafts where the benefit of the fee-free amount is liable to be lost in certain circumstances.
- (d) (i) For the purposes of calculating the *total charge for credit* and the *APR*, ■ CONC App 1.2.5R (Assumptions for calculation) sets out various assumptions. A number of these assumptions

apply “where necessary” to deal in a consistent and comparable way with factors that are not certain at the time the *total charge for credit* or *APR* is calculated.

- (ii) Where, however, the terms of a permissible fee-free amount that apply to an *authorised non-business overdraft agreement* are known at the time the *APR* is calculated (and the incidence of the benefit of the fee-free amount is certain if the overdraft is used), the *APR* calculation should reflect those terms. In that situation, it is unlikely to be necessary to make the assumption that the fee-free amount does not exist under ■ CONC App 1.2.5R.

- (1D) (a) (i) This *guidance* is relevant to whether to include account fees in the calculation of the *APR* for an *authorised non-business overdraft agreement*. The type of account fee this *guidance* is intended to address is a periodic charge a *customer* is required to pay in order to obtain and maintain access to a personal current account that has an overdraft facility.
- (ii) ■ CONC App 1.2.3R (Total charge for credit) provides that the costs of maintaining an account recording both payment transactions and drawdowns are included in the *total cost of credit to the borrower*. There is an exception to this rule (see ■ CONC App 1.2.3R(3)) where: “(a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the *regulated credit agreement* or in any other agreement with the *borrower*; (b) in the case of an *overdraft facility* the costs do not relate to that facility.”
- (iii) Whether an account fee is required to be included in the calculation of an *APR* depends on whether the *credit* under the associated *authorised non-business overdraft agreement* can be obtained on the same terms without incurring the account fee. If an *authorised non-business overdraft agreement* is not available on the same equally favourable terms without the imposition of the fee, that fee is likely to be considered to “relate” to the overdraft facility.
- (b) The following are examples of situations where it is likely that an account fee should be included in the calculation of the *total charge for credit* and the *APR* for an *authorised non-business overdraft agreement*.
 - (i) A personal current account that is subject to an account fee, one of the features of which is an arranged overdraft facility with more favourable terms (for example, a lower interest rate) than those offered on accounts that do not require the payment of an account fee.
 - (ii) A *firm* that offers personal current accounts with associated arranged overdraft facilities in respect of all of which there is an account fee.
- (c) A *firm* may offer a “packaged bank account” that is a composite product with a number of constituent elements, one of which is an overdraft facility, but others of which are different services. If there is a fee for an optional non-overdraft element of the package that the *customer* can avoid by choosing not to have that element of the package, and the *customer* can still have the

overdraft element of the package on the same terms, that avoidable fee should not be included in the *APR* calculation.

- (2) Where the agreement provides for compounding, the rate of interest in ■ CONC 3.5.5R (1) should generally be the effective annual interest rate and *lenders* should use the same assumptions to calculate this interest rate as they do for the *APR*; the assumptions set out in ■ CONC App 1.2. If a *firm* uses a different rate to calculate the rate of interest in ■ CONC 3.5.5R (1) it must clearly explain this to the *customer*, so that the *customer* is clear whether and to what extent the rate used is comparable with rates shown by other *lenders*.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (3) [deleted]

- (4) For charges other than interest which are included in the *total charge for credit*, the *financial promotion* should in each case make clear the nature of the charge and the amount of the charge if ascertainable or a reasonable estimate of the charge, making clear in that case it is an estimate.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (5) The *total amount of credit* equates to the sum available to the *customer* to use and does not include charges which are financed by the *credit agreement*; those are part of the *total charge for credit*.
- (6) For showing the *cash price*, the total *cash price* of all items should be shown, together with the price of each item individually. For the purposes of the *Glossary* definition of *cash price* in this context, a discount will be treated as generally available if most *customers* paying in cash are likely to be, or would reasonably expect to be, offered or given the discount.
- (7) Other than in the case of an *authorised non-business overdraft agreement* provided by a *firm* of a type listed in ■ CONC 5C.1.2R(2), where a *financial promotion* for an *authorised non-business overdraft agreement* is required to include a representative example, one of the items that must be included in the example is the *representative APR*.

Other financial promotions requiring a representative APR

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- (1) A *financial promotion* must include the *representative APR* if it:
 - (a) states or implies that *credit* is available to *individuals* who might otherwise consider their access to *credit* restricted; or
 - (b) includes a favourable comparison relating to the *credit*, whether express or implied, with another *person*, product or service; or
 - (c) includes an incentive to apply for *credit* or to enter into an agreement under which *credit* is provided.

[Note: regulation 6 of *CCAR 2010*]

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- (1A) A *financial promotion* which states that a cash sum is available for opening an account, other than a current account mortgage, which is a payment account within the meaning of the *Payment Accounts Regulations* and which does not refer to the availability of *credit* under an *authorised non-business overdraft agreement* in connection with that account must not be regarded as including an incentive to apply for *credit* or to enter into an agreement under which *credit* is provided for the purposes of (1)(c).
- (2) The *representative APR* must be given no less prominence than any of the matters in (1).
- (3) This *rule* does not apply to a *financial promotion*:
 - (a) for an *authorised non-business overdraft agreement* provided by a *firm* of a type listed in ■ CONC 5C.1.2R(2); or
 - (b) for a *credit agreement* in respect of which the *APR* is 0%; or
 - (c) for a *credit agreement* to be entered into by a *community finance organisation as lender*.
- (1) A *firm's* trading name, website address or logo could trigger the requirements in ■ CONC 3.5.7R(1).
- (2) For the purposes of ■ CONC 3.5.7R(1)(b), a comparison with another *person*, product or service includes a reference (whether stated or implied) to:
 - (a) the terms on which, or the way in which, *credit* is offered or made available; or
 - (b) the nature or quality or any other aspect of the service relating to the *credit* that the *person* offers or provides (or does not offer or provide).

The *financial promotion* does not need to specify a particular *person*, product or service for there to be a comparison.
- (3) A *financial promotion* does not necessarily include a comparison where it merely refers to a *person*, product or service in a factual manner, but there will be an implied comparison for the purposes of ■ CONC 3.5.7R(1)(b) if it may reasonably be inferred that a comparison is being made.
- (4) A statement about matters such as the speed or ease of processing, considering or granting an application, of entering into an agreement, or of making funds available, may constitute an incentive for the purposes of ■ CONC 3.5.7R(1)(c). This will depend on the context of the statement and the circumstances in which it is made. A statement will be an incentive where it is likely to persuade or influence a *customer* to apply for *credit* or to enter into an agreement under which *credit* is provided, or is presented in a way which is likely to have that effect.
- (5) Other examples of things which could be incentives are gifts, special offers, discounts and rewards.

- (6) ■ CONC 3.5.7R applies to a *firm* with respect to a *financial promotion* for an *authorised non-business overdraft agreement* except a *firm* of a type listed in ■ CONC 5C.1.2R(2).

Annual percentage rate of charge

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In a *financial promotion*:

- (1) an *APR* must be shown as “%APR”;
 - (2) where an *APR* is subject to change it must be accompanied by the word “variable”;
 - (3) the *representative APR* must be accompanied by the word “representative”; and
 - (4) where the *financial promotion* is:
 - (a) in writing; and
 - (b) for an *authorised non-business overdraft agreement*, the *representative APR* must be accompanied by the following information:
 - (c) a statement as follows:

“How does our overdraft compare?”; and
 - (d) wording, in plain and intelligible language, that explains to *customers* that the purpose of a *representative APR* is to enable *customers* to compare the costs associated with different *credit* products; and
- this information must be given reasonable prominence and be in sufficiently close proximity to the *representative APR* to make it reasonably apparent to *customers* that the relevant wording relates to the *representative APR*.

[Note: regulation 7 of CCAR 2010]

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■ CONC 3.5.9R(4) applies only to *financial promotions* that are in writing. In accordance with ■ GEN 2.2.14R, this means *financial promotions* that are in legible form and capable of being reproduced on paper, irrespective of the medium used. The *rule* does not, therefore, apply to a *financial promotion* communicated by means of television or radio broadcast.

Ancillary services

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- (1) A *financial promotion* must include a clear, concise and prominent statement in respect of any obligation to enter into a contract for an *ancillary service* where:
 - (a) the conclusion of that contract is compulsory in order to obtain the *credit* or to obtain it on the terms and conditions promoted; and
 - (b) the cost of that *ancillary service* cannot be determined in advance.

[Note: regulation 8 of CCAR 2010]

- (2) The statement in (1) must be presented together with any *representative APR* included in the *financial promotion*.
- (3) This rule does not apply to a *financial promotion* for an *authorised non-business overdraft agreement*.

Security

3.5.11 R Where a *financial promotion* concerns a facility for which *security* is or may be required, the promotion must:

- (1) state that *security* is or may be required; and
- (2) specify the nature of the *security*.

[Note: regulation 9 of CCAR 2010]

Restricted expressions

3.5.12 R (1) A *financial promotion* must not include:

- (a) the word “overdraft” or any similar expression as describing any agreement for *running-account credit*, except where an agreement enables a *customer* to overdraw on a current account;
- (b) the expression “interest free” or any similar expression indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by *credit* than he would be liable to pay as a cash purchaser for the like transaction, except where the *total amount payable* does not exceed the *cash price*;
- (c) the expression “no deposit” or any similar expression, except where no *advance payments* are to be; or
- (d) [deleted];
- (e) the expression “gift”, “present” or any similar expression, except where there are no conditions which would require the *customer* to repay the *credit* or to return the item that is the subject of the claim.

[Note: regulation 10 of CCAR 2010]

- (2) A *financial promotion* must not include for a *repayment of credit* the expression “weekly equivalent” or any expression to like effect or any expression of any other periodical equivalent, unless weekly *repayments* or the other periodical payments are provided for under the agreement.
- (3) In this rule, “cash purchaser” means a *person* who, for money consideration, acquires *goods, land* or other things or is provided with services under a transaction which is not financed by *credit*.

3.5.13

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Total charge for credit and APR

- (1) Where a *financial promotion* is about *running-account credit* and the *credit limit* applicable is not yet known on the date the *financial promotion* is made, but it is known that it will be less than £1,200, the *credit limit* must be assumed to be an amount equal to that maximum limit.

[Note: paragraph 1 of schedule to CCAR 2010]

- (2) The assumption in (1) applies in place of the assumption in ■ CONC App 1.2.5 R for the purpose of calculating the *total charge for credit*.

Total charge for credit and APR: tolerances for APR

- (3) For a *financial promotion*, it is sufficient to show an *APR* if there is included in the promotion:
- (a) a rate which exceeds the *APR* by not more than one; or
 - (b) a rate which falls short of the *APR* by not more than 0.1; or
 - (c) where applicable, a rate determined in accordance with (4) or (5).

[Note: paragraph 2 of schedule to CCAR 2010]

Total charge for credit and APR: tolerance where repayments are nearly equal

- (4) Where an agreement under which all *repayments* but one are equal and that one *repayment* does not differ from any other *repayment* by more whole pence than there are *repayments* of *credit*, there may be included in a *financial promotion* about the agreement a rate found under ■ CONC App 1.2.4 R as if that one *repayment* were equal to the other *repayments* to be made under the agreement.

[Note: paragraph 3 of schedule to CCAR 2010]

Total charge for credit and APR: tolerance regarding interval between relevant date and first repayment

- (5) Where a *credit agreement* provides that:
- (a) three or more *repayments* are to be made at equal intervals; and
 - (b) the interval between the relevant date and the first *repayment* is greater than the interval between the *repayments*;
- a *financial promotion* about the agreement may include a rate found under ■ CONC App 1.2.4 R as if the interval between the relevant date and the first *repayment* were shortened so as to be equal to the interval between the *repayments*.

[Note: paragraph 4 of schedule to CCAR 2010]

- (6) The relevant date in (5) is:

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- (a) where a date on which the *customer* is entitled to require provision of the subject of a *credit agreement* is specified in or can be determined from the agreement, the earliest such date;
- (b) in any other case, the date of making the agreement.

Promotions relating to non-business overdraft agreements

A *direct offer financial promotion* made in writing and relating to a *non-business overdraft agreement* will also need to comply with the *rules* in ■ **BCOBS 2.2B** (General information about overdrafts for personal current accounts) where those *rules* apply.