

Chapter 4

Pre-contractual requirements

4.1 Content of quotations

Application

4.1.1

R

This section, apart from ■ CONC 4.1.4 R, applies to:

- (1) a *firm* with respect to *consumer credit lending*; or
- (2) a *firm* with respect to *consumer hiring*;

including where the *firm* provides a quotation acting on behalf of a *customer*.

4.1.2

R

■ CONC 4.1.4 R applies to a *firm* with respect to *credit broking*, including where the *firm* provides a quotation acting on behalf of a *customer*.

Lenders and owners: contents of quotation for certain agreements

4.1.3

R

- (1) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.

[Note: regulation 3a of SI 1999/2725]

- (2) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home under which, while C continues to occupy the home as C's main residence and either:
 - (a) no instalment *repayments* of the *credit* secured by a mortgage on C's home and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by C), are due or capable of becoming due; or
 - (b) the *lender* cannot enforce the *credit agreement* by taking possession of or selling (or concurring with any other *person* in selling) the home or any part of it while C continues to occupy it as C's main residence; and
 - (c) where (b) applies, although interest payments may become due, no full or partial *repayment* of the *credit* secured by a mortgage is due or capable of becoming due.

[Note: regulation 3B of SI 1999/2725]

the *firm* must include (or cause to be included) in the quotation the following statement:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE.”

[Note: regulation 3A of SI 1999/2725]

- (3) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C’s home, other than an agreement to which (2) applies, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT.”

[Note: regulation 3b of SI 1999/2725]

- (4) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would or might be secured on *land* and under which *repayments* would be made in a currency other than sterling, the *firm* must include (or cause to be included) in the quotation the following statement:

“THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT.”

[Note: regulation 4 of SI 1999/2725]

- (5) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation a statement that such security would or might be required.

[Note: regulation 5a of SI 1999/2725]

- (6) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”

[Note: regulation 5b of SI 1999/2725]

Credit brokers: contents of quotation for certain agreements

4.1.4



- (1) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included)

in the quotation a statement that such *security* would or might be required.

[Note: regulation 6 of SI 1999/2725]

- (2) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home under which, while C continues to occupy the home as C's main residence and either:
- (a) no instalment *repayments* of the *credit* secured by a mortgage on C's home and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by C), are due or capable of becoming due; or
 - (b) the *lender* cannot enforce the *credit agreement* by taking possession of or selling (or concurring with any other *person* in selling) the home or any part of it while C continues to occupy it as C's main residence; and
 - (c) where (b) applies, although interest payments may become due, no full or partial *repayment* of the *credit* secured by a mortgage is due or capable of becoming due;

the *firm* must include (or cause to be included) in the quotation the following statement:

"CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE."

- (3) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home, other than an agreement to which (2) applies, the *firm* must include (or cause to be included) in the quotation the following statement:

"YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT."

- (4) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would be secured on *land* and under which *repayments* would be made in a currency other than sterling, the *firm* must include (or cause to be included) in the quotation the following statement:

"THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT."

- (5) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.

- (6) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”

Interpretation: quotations

4.1.5

R

- (1) Paragraphs (2) to (5) apply to ■ CONC 4.1.3 R and ■ CONC 4.1.4 R (rules on content of quotations).
- (2) “Quotation” means any document by which a *person* gives a *customer* information about the terms on which the *person* or a *lender* or *owner* is prepared to do business, but it does not include:
 - (a) a communication which is also a *financial promotion*;
 - (b) any document given to a *customer* under section 58 of the CCA (opportunity for withdrawal from prospective land mortgage);
 - (c) any document sent to a *customer* for signature which embodies the terms or such of them as it is intended to reduce to writing of a *credit agreement* or a *consumer hire agreement*; or
 - (d) any copy of an unexecuted agreement delivered or sent to a *customer* under section 62 of the CCA (duty to supply copy of unexecuted agreement).
- (3) Where the words of a statement which must be included in a quotation are specified, the statement must be:
 - (a) in capital letters;
 - (b) clear and legible; and
 - (c) prominent.
- (4) Providing a quotation includes making a quotation available temporarily.
- (5) In these *rules* as they apply to Scotland:
 - (a) any reference to bailment is a reference to hiring; and
 - (b) any reference to a mortgage or a charge on *land* is a reference to a standard security over *land* within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970.

4.1.6

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For the purposes of ■ CONC 4.1.5R(3)(c), a statement included in a quotation will not be treated as prominent unless it is presented, in relation to the other content of the quotation, in such a way that it is likely that the attention of the average *customer* to whom such a quotation is addressed would be drawn to it.

4.2 Pre-contract disclosure and adequate explanations

Application

4.2.1

R

This section, unless otherwise stated in or in relation to a *rule*:

- (1) applies to a *firm* with respect to *consumer credit lending*;
- (2) applies to a *firm* with respect to *credit broking* where the *firm* has or takes on responsibility for providing the disclosures and explanations to *customers* required by this section;
- (3) does not apply to an agreement under which the *lender* provides the *customer* with *credit* which exceeds £60,260, unless the agreement is a *residential renovation agreement*;
- (4) does not apply to an agreement secured on *land*; and
- (5) does not apply to a *borrower-lender agreement* enabling the *customer* to overdraw on a current account other than such an agreement which would be an *authorised non-business overdraft agreement*, but for the fact that the *credit* is not repayable on demand or within three *months*.

[Note: section 74(1D) of CCA]

4.2.2

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For the agreements referred to in **■** CONC 4.2.1R (3), **■** (4) and **■** (5), a *firm* within **■** CONC 4.2.1R (1) or **■** CONC 4.2.1R (2) should consider whether it is necessary or appropriate to provide explanations of the matters in **■** CONC 4.2.5R (2); in particular, a *firm* should consider highlighting the principal consequences to the *customer* including the consequences of missing payments or under-paying, including, where applicable, the risk of repossession of the *customer's* property.

[Note: section 55A(6) of CCA and paragraphs 3.1(box) of ILG]

Other disclosure requirements

4.2.3

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- (1) The *disclosure regulations* made under section 55 of the CCA which require information to be disclosed before a *regulated credit agreement* is made remain in force.
- (2) Failure to comply with the *disclosure regulations* has the effect that agreements are enforceable against a borrower or hirer (as defined in the CCA) only with an order of court and enforcement for that

purpose includes a retaking of goods or *land* to which the agreement relates.

- (3) Other relevant disclosure requirements are found in ■ CONC 2.7 (distance marketing) and ■ CONC 2.8 (electronic commerce), the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095), the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) and the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) and the Cancellation of Contracts made in the Consumer's home etc Regulations 2008 (SI 2008/1816).

4.2.4

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The pre-contractual information disclosed under the *disclosure regulations* and the pre-contractual explanations required under ■ CONC 4.2.5 R should take into account any preferences expressed, or information provided by, the *customer* where the *firm* would in principle agree to offer *credit* on such terms

[Note: paragraph 3.13 (box) of *ILG*]

Pre-contractual adequate explanations

4.2.5

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- (1) Before making a *regulated credit agreement* the *firm* must:
- (a) provide the *customer* with an adequate explanation of the matters referred to in (2) in order to place the *customer* in a position to assess whether the agreement is adapted to the *customer's* needs and financial situation;
 - (b) advise the *customer*:
 - (i) to consider the information which is required to be disclosed under section 55 of the *CCA*; and
 - (ii) where the information is disclosed in person, that the *customer* is able to take it away;
 - (c) provide the *customer* with an opportunity to ask questions about the agreement; and
 - (d) advise the *customer* how to ask the *firm* for further information and explanation.
- [Note: section 55A(1) of *CCA*]
- (2) The matters referred to in (1)(a) are:
- (a) the features of the agreement which may make the *credit* to be provided under the agreement unsuitable for particular types of use;
 - (b) how much the *customer* will have to pay periodically and, where the amount can be determined, in total under the agreement;
 - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the *customer* in a way which the *customer* is unlikely to foresee;
 - (d) the principal consequences for the *customer* arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon

the type and amount of *credit* and the circumstances of the *customer*:

- (i) the total cost of the debt growing;
 - (ii) incurring any default charges or interest for late or missed payment or under-payment;
 - (iii) impaired credit rating and its effect on future access to or cost of *credit*;
 - (iv) legal proceedings, including reference to charging orders (or, in Scotland, inhibitions), and to the associated costs of such proceedings;
 - (v) repossession of the *customer's* home or other property; and
 - (vi) where an article is taken in *pawn*, that the article might be sold, if not redeemed; and
- (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.

[Note: section 55A(2) of CCA and paragraph 3.13 of ILG]

- (3) The adequate explanation and advice in (1) may be given orally or in writing, except where (4) applies.

[Note: section 55A(3) of CCA]

- (4) Where the matters in (2)(a), (b) or (e) are given orally or to the *customer* in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the *customer*.

[Note: section 55A(4) of CCA]

- (5) Paragraphs (1) to (4) do not apply to a *lender* if a *credit broker* has complied with those sub-paragraphs in respect of the agreement.

[Note: section 55A(5) of CCA]

- (6) Where the *regulated credit agreement* is an agreement under which a *person* takes an article in *pawn*:

- (a) the requirement in (1)(a) only relates to the matters in (2)(d) and (e); and
- (b) the requirements in (1)(b) and (d) do not apply.

[Note: section 55A(7) of CCA]

- (7) This *rule* does not apply to:

- (a) a *non-commercial agreement*;
- (b) a *small borrower-lender-supplier agreement* for restricted-use credit

[Note: section 74(1) of CCA]

- (8) [deleted]

(9) [deleted]

[Note: article 5(6) of the *Consumer Credit Directive*]

4.2.6

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The explanation provided by a *lender* or a *credit broker* under ■ CONC 4.2.5 R should enable the *customer* to make a reasonable assessment as to whether the *customer* can afford the *credit* and to understand the key associated risks.

[Note: paragraph 3.3 (box) of *ILG*]

4.2.7

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In deciding on the level and extent of explanation required by ■ CONC 4.2.5 R, the *lender* or *credit broker* should consider (and each of them should ensure that anyone acting on its behalf should consider), to the extent appropriate to do so, factors including:

- (1) the type of *credit* being sought;
- (2) the amount and duration of *credit* to be provided;
 - the actual and potential costs of the *credit*;
- (2B) the risk to the *customer* arising from the *credit* (the risk to the *customer* is likely to be greater the higher the total cost of the *credit* relative to the *customer's* financial situation);
- (2C) the purpose of the *credit*, if the *lender* or (as the case may be) the *credit broker* knows what that purpose is;
- (3) to the extent it is evident and discernible, the *customer's* level of understanding of the agreement, and of the information and the explanation provided about the agreement; and
- (4) the channel or medium through which the *credit* transaction takes place.

[Note: paragraph 3.4 of *ILG*]

4.2.7A

G

- (1) ■ CONC 4.2.5R(1) requires the *customer* to be provided with an adequate explanation of the matters in ■ CONC 4.2.5R(2). Where there is more than one *customer* acting together as 'joint borrowers', the *lender* or *credit broker* should consider whether it may be appropriate to give separate explanations to each *customer* and whether the explanation should be the same or different for each, rather than giving a single explanation to all of them jointly. (Where the *borrower* is a *partnership* or an unincorporated association, the members or *partners* may be treated as a single *customer*.)
- (2) In deciding whether it is appropriate to give separate explanations to each *customer*, and in determining the level and extent of explanation required for each *customer*, the *lender* or *credit broker* should consider the factors in ■ CONC 4.2.7G separately for each *customer*.

(3) However, ■ CONC 4.2.5R(4) does not require an oral explanation of the matters in ■ CONC 4.2.5R(2)(c) and (d) to be given to one *customer* simply because an oral explanation of the matters in ■ CONC 4.2.5R(2)(a), (b) or (e) was given to a different *customer*.

4.2.8 **R** Where the *regulated credit agreement* is *high-cost short-term credit*, the *lender* or a *credit broker* must explain under ■ CONC 4.2.5R (1)(a) that entering into that agreement would be unsuitable to support sustained borrowing over long periods and would be expensive as a means of longer term borrowing.

[Note: paragraph 3.13 (box) of *ILG*]

4.2.9 **R** Even where a *customer* states or implies that there is no need for an explanation of the *regulated credit agreement*, the *lender* or *credit broker* must continue to comply with ■ CONC 4.2.5 R.

[Note: paragraph 3.10 of *ILG*]

4.2.10 **R** A *lender* or a *credit broker* must not encourage or induce a *customer* to waive the rights in ■ CONC 4.2.5 R.

[Note: paragraph 3.10 of *ILG*]

4.2.11 **R** Before a *lender* concludes that ■ CONC 4.2.5R (1) to ■ CONC 4.2.5R (4) do not apply to it in relation to a *regulated credit agreement* by virtue of ■ CONC 4.2.5R (5), the *lender* must take reasonable steps to satisfy itself that an explanation of that agreement complying with ■ CONC 4.2.5 R has been provided to the *customer* by the *credit broker*.

[Note: paragraph 3.11 (box) of *ILG*]

4.2.12 **R** The *lender* or the *credit broker* must enable a *customer* to request and obtain further information and explanation about a *regulated credit agreement* without incurring undue cost or delay.

[Note: paragraph 3.16 (box) of ILG]

4.2.13 **R** Neither a *lender* nor a *credit broker* may require a *customer* to acknowledge that the information and explanations it has provided are adequate to satisfy the requirements of **CONC 4.2.5 R**.

[Note: paragraph 3.30 (box) of ILG]

4.2.14 **G** A *lender* or *credit broker* may require an acknowledgement that it has provided an explanation, and of receipt of any written information that forms a part of the explanation, but not an acknowledgement as to its adequacy. **CONC 4.2.13 R** does not prevent the *lender* or *credit broker* asking if the *customer* has understood an explanation given.

[Note: paragraph 3.30 (box) of ILG]

Adequate explanations in relation to particular regulated credit agreements

4.2.15 **R** The following information must be provided by the *lender* or a *credit broker* as part of, and in addition to that provided under, the adequate explanation required by **CONC 4.2.5 R**, where applicable, in the specified cases:

- (1) for *credit token agreements*:
 - (a) different rates of interest and different charges apply to different elements of the *credit* provided (for example, a higher cost of withdrawing cash);
 - (b) the implications of only making minimum *repayments*;
 - (c) interest rates or charges may be increased;
 - (d) where applicable, the interest rates may be increased based on the risks presented by the individual *customer*;
 - (e) the limitations on any zero percentage or low interest or other introductory offer; and
 - (f) conditions on any balance transfers, including any fees and charges which may apply;
- (2) for *credit card cheques*, the higher associated costs relative to payment by credit card;
- (3) for *home credit loan agreements* and *high-cost short-term credit*, the effect of refinancing (within the meaning in **CONC 6.7.17 R**) or otherwise extending the duration of the *credit* or of the *credit agreement*;
- (4) for *bill of sale loan agreements*:
 - (a) the risk of losing the asset which is the subject of the bill of sale and the loss this could entail;

- (b) that repossession can take place without a court order;
 - (c) that repossession may not clear the debt owed; and
 - (d) unlike in the case of *hire-purchase agreements* and *conditional sale agreements*, the *customer* is not protected under this arrangement from repossession of the asset where one third or more of the *total amount payable* has been paid off;
- (5) for *hire purchase agreements* and *conditional sale agreements*:
- (a) the *customer* does not own the *goods* until the sums required under the agreements have been paid, including any option to purchase fee and any other conditions have been satisfied;
 - (b) *goods* can be repossessed without a court order in the event of default, unless in relation to a *regulated credit agreement* the *customer* has paid a third or more of the *total amount payable*;
- (6) for a *credit agreement* which is used to consolidate existing debts of the *customer* (whether to the same *lender* or to another *person*) and where applicable in each case:
- (a) the effect of consolidating the debts will involve payment of a higher rate of interest or charges or both (if the relevant information about existing debts is known to the *lender* or *credit broker*);
 - (b) the effect of consolidating the debts will involve increasing the period required for repayment (if the relevant information about existing debts is known to the *lender* or *credit broker*); and
 - (c) the *credit agreement* would be secured on the *customer's* property;
- (7) for a *credit agreement* which includes a condition requiring a guarantor, the requirement for the *customer* to provide *security* in the form of a guarantee.

[Note: paragraph 4.26c of *CBG*]

[Note: paragraph 3.13 of *ILG*]

4.2.16

G Where a *customer* does not have a good understanding of the English language, the *lender* or *credit broker* may need to consider alternative methods of providing relevant information concerning the explanation required by **CONC 4.2.5 R** in order for the *customer* to make an informed decision, such as, providing the information to a person with such understanding who can assist the *customer*, for example, a friend or relative.

[Note: paragraph 3.4 (box) of *ILG*]

Guidance for adequate explanations where agreements are marketed by distance or electronic means

4.2.17

G Since the use of distance means of communication (such as the internet) by their nature limit the *lender's* or *credit broker's* ability to ascertain the *customer's* level of understanding of explanations provided, a *lender* or

credit broker using those means may, for example, wish to provide local rate telephone number for *customers* who wish to seek further explanation.

[Note: paragraph 3.6 (box) of *ILG*]

4.2.18 **G** Interaction is an important part of compliance with the requirement in ■ **CONC 4.2.5R (1)**, for example, where the agreement is marketed and concluded by *electronic means*. For an online application, the requirement in ■ **CONC 4.2.5R (1)(c)** (the right to ask questions) may be complied with by the *customer* being able to access an appropriately comprehensive set of answers to frequently asked questions about the agreement or by being able to speak to a representative of the online provider.

[Note: paragraph 3.8 (box) of *ILG*]

4.2.19 **G** For a *regulated credit agreement* marketed and concluded by *electronic means* to comply with ■ **CONC 4.2.5 R** the *customer* should pass through screens containing the required information and explanations, giving the *customer* the opportunity to see and read the explanations provided. Merely providing a link to where such information can be found is unlikely to satisfy the requirements in ■ **CONC 4.2.5 R**, where the agreement can be concluded without accessing the link.

[Note: paragraph 3.15 (box) of *ILG*]

4.2.20 **G** For telephone or face-to-face transactions, interaction between the *customer* and the *firm's* representative is also important. It should be made clear to the *customer* that the *customer* can ask questions or request further information or explanation and, for example, the representative solely providing the *customer* with a written explanation of an agreement, or relying solely on a written script in relation to an agreement, is unlikely to comply with the requirement in ■ **CONC 4.2.5 R**.

[Note: paragraph 3.9 (box) of *ILG*]

4.2.21 **G** Where a *regulated credit agreement* is a modifying agreement under section 82(2) of the *CCA*, the requirements in ■ **CONC 4.2** apply before the agreement is made.

[Note: paragraph 3.12 of *ILG*]

Credit agreements where there is a guarantor etc

4.2.22 **R**

- (1) This *rule* applies if:
 - (a) a *firm* is to enter into a *regulated credit agreement*; and
 - (b) an *individual* other than the *borrower* (in this *rule* referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both) in relation to the *regulated credit agreement*.
- (2) The *firm* must, before making the *regulated credit agreement*, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an

informed decision as to whether to act as the guarantor in relation to the *regulated credit agreement*.

- (3) The matters are:
 - (a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and
 - (b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.
- (4) For the purposes of (2), the *rules* and *guidance* listed in (5) apply as if:
 - (a) references to the *customer* were references to the guarantor; and
 - (b) references to ■ CONC 4.2.5R were references to this *rule*.
- (5) The *rules* and *guidance* are:
 - (a) ■ CONC 4.2.6G to ■ CONC 4.2.7AG;
 - (b) ■ CONC 4.2.9R and ■ CONC 4.2.10R;
 - (c) ■ CONC 4.2.12R to ■ CONC 4.2.14G; and
 - (d) ■ CONC 4.2.16G to ■ CONC 4.2.21G.
- (6) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

4.2.23

R

- (1) ■ CONC 4.2.22R does not apply to a *lender* if a *credit broker*, a solicitor, a barrister, (in Scotland) an advocate, or a relevant person has complied with that *rule* in respect of the agreement.
- (2) Before a *lender* concludes that ■ CONC 4.2.22R does not apply to it in relation to a *regulated credit agreement* by virtue of (1), the *lender* must take reasonable steps to satisfy itself that:
 - (a) an explanation complying with ■ CONC 4.2.22R(2) has been provided to the guarantor; and
 - (b) the following had been provided to the *person* giving the explanation, before the explanation was given:
 - (i) a copy of the agreement;
 - (ii) if the guarantee or the indemnity (or both) is contained in a document other than the agreement, a copy of that document; and
 - (iii) a copy of any other document or information in writing relating to the agreement which had been provided to the guarantor by the *lender* or the *credit broker*.
- (3) In this *rule*, "relevant person" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), and is not a solicitor, a barrister or (in Scotland) an advocate.

4.2.24

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■ CONC 4.2.23R permits the explanation required by ■ CONC 4.2.22R to be given by a *credit broker*. It also permits the explanation to be given by a solicitor, a

barrister, a Scottish advocate or another “relevant person” (for example, in the course of giving independent legal advice to the guarantor). The explanation may only be given by such a *person* if the information and documents listed in that *rule* had been provided to that *person*.

4.3 Pre-contractual requirements and adequate explanations: P2P agreements

Application

4.3.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending*.

4.3.2 **R** This section (apart from **■ CONC 4.3.6 R**) does not apply to:

- (1) an agreement under which the *lender* provides the prospective *borrower* with *credit* which exceeds £60,260, unless the agreement is a *residential renovation agreement*; or
- (2) an agreement secured on *land*.

4.3.3 **G** For the agreements referred to in **■ CONC 4.3.2 R**, a *firm* should consider whether it is necessary or appropriate to provide explanations of the matters in **■ CONC 4.5.3R (2)**, in particular, a *firm* should consider highlighting key risks to the *borrower* including the consequences of missing payments or under-paying, including, where applicable, the risk of repossession of the *borrower's* property.

[**Note:** section 55A(6) of CCA and paragraph 3.1 of ILG]

[**Note:** Until the end of 30 September 2014, transitional provisions apply to **■ CONC 4.3.3 G**: see **■ CONC TP 4.1**]

Pre-contractual requirements

4.3.3A **R**

- (1) This *rule* applies if the *lender*, or the prospective *lender*, under a *P2P agreement* is, or would be, carrying on by way of business the *regulated activity* of *entering into a regulated credit agreement as lender* by entering into the agreement.
- (2) Any fee to be paid by the *borrower* to the *operator of an electronic system in relation to lending* must be agreed between the *borrower* and the *operator*, and that agreement must be recorded in writing or other *durable medium* before the *P2P agreement* is entered into.
- (3) The *operator of an electronic system in relation to lending* must disclose to the *lender* the fee, if any, for its activity payable by the

borrower for the purpose of enabling the *lender* to calculate the *annual percentage rate of charge* for the *P2P agreement*.

[Note: article 21(b) and (c) of the *Consumer Credit Directive*]

Adequate explanations

4.3.4

R

- (1) Before a *P2P agreement* is made, the *firm* must:
 - (a) provide the prospective *borrower* with an adequate explanation of the matters referred to in (2) in order to place the *borrower* in a position to assess whether the agreement is adapted to the *borrower's* needs and financial situation;
 - (b) where the *P2P agreement* is not a *non-commercial agreement*, advise the prospective *borrower*:
 - (i) to consider the information which is required to be disclosed under section 55(1) of the *CCA*; and
 - (ii) where the information is disclosed in person, that the *borrower* is able to take it away;
 - (c) provide the prospective *borrower* with an opportunity to ask questions about the agreement; and
 - (d) advise the prospective *borrower* how to ask the *firm* for further information and explanation.
- (2) The matters referred to in (1)(a) are:
 - (a) the features of the agreement which may make the *credit* to be provided under the agreement unsuitable for particular types of use;
 - (b) how much the *borrower* will have to pay periodically and, where the amount can be determined, in total under the agreement;
 - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the *borrower* in a way which the prospective *borrower* is unlikely to foresee;
 - (d) the principal consequences for the *borrower* arising from a failure to make payments under the agreement at the times required by the agreement, including legal proceedings and, where this is a possibility, repossession of the *borrower's* home; and
 - (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.
- (3) Except where (4) applies, the adequate explanation and advice in (1) may be given orally or in writing.
- (4) Where the matters in (2)(a), (b) or (e) are given orally or to the prospective *borrower* in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the *borrower*.
- (5) Where this *rule* applies to a *borrower-lender agreement* to finance the making of payments arising on or connected with the death of a person, this *rule* applies to the agreement to the extent the payments are:

- (a) inheritance tax chargeable in the *UK* on the death of any person;
- (b) fees payable to a court:
 - (i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;
 - (ii) in Scotland, in connection with a grant of confirmation; and
 - (iii) in the *UK*, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and
- (c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.

[Note: section 74(1F) of CCA and SI 1983/1554]

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 4.3.4 R: see ■ CONC TP 4.1]

4.3.5 **R** Where ■ CONC 4.3.4 R applies to a *firm*, the *firm* must comply with the *rules*, and observe the *guidance*, in ■ CONC 4.2 to the same extent as if it were the *lender* under an agreement to which those *rules* apply.

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 4.3.5 R: see ■ CONC TP 4.1]

4.3.6 **R** Before a *P2P agreement* which is secured on the *borrower's* home is made, a *firm* must in a prominent way give the following warning:

“YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT”

4.3.7 **G** For the purposes of ■ CONC 4.3.6R, a warning will not be treated as prominent unless it is presented in such a way that it is likely that the attention of the average *customer* would be drawn to it.

P2P agreements where there is a guarantor etc

4.3.8 **R**

- (1) This *rule* applies if:
 - (a) a *firm* with *permission* to carry on the activity of *operating an electronic system in relation to lending* is to facilitate the entry into a *P2P agreement*;
 - (b) the prospective *borrower* is an *individual*; and
 - (c) an *individual* other than the *borrower* (in this *rule* referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both) in relation to the *P2P agreement*.
- (2) The *firm* must, before the *P2P agreement* is made, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed

decision as to whether to act as the guarantor in relation to the *P2P agreement*.

- (3) The matters are:
 - (a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and
 - (b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.
- (4) For the purposes of (2), the *rules* and *guidance* listed in (5) apply as if:
 - (a) references to the *customer* were references to the guarantor;
 - (b) references to ■ CONC 4.2.5R were references to this *rule*; and
 - (c) references to the *regulated credit agreement* were references to the *P2P agreement*.
- (5) The *rules* and *guidance* are:
 - (a) ■ CONC 4.2.6G to ■ CONC 4.2.7AG;
 - (b) ■ CONC 4.2.9R and ■ CONC 4.2.10R;
 - (c) ■ CONC 4.2.12R to ■ CONC 4.2.14G; and
 - (d) ■ CONC 4.2.16G to ■ CONC 4.2.21G.
- (6) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

4.4 Pre-contractual requirements: credit brokers

Application

4.4.1 **R** This section applies to a *firm* carrying on *credit broking* in relation to a *regulated credit agreement*.

4.4.1A **R** ■ CONC 4.4.3 R applies to a *firm* carrying on *credit broking* whether or not it is in relation to a *regulated credit agreement*.

Pre-contractual requirements

4.4.2 **R** (1) A *firm* must disclose to the *customer* the fee, if any, payable by a *customer* to the *firm* for its services.

[Note: section 160A(4) of CCA]

(2) Any fee to be paid by the *customer* to the *firm* must be agreed between the *customer* and the *firm*, and that agreement must be recorded in writing or other *durable medium* before a *regulated credit agreement* is entered into.

[Note: section 160A(4) of CCA]

(3) A *firm* must disclose to the *lender* the fee, if any, for its activity payable by the *customer* for the purpose of enabling the *lender* to calculate the *annual percentage rate of charge* for the *credit agreement*.

[Note: section 160A(5) of CCA]

(4) A *firm* must disclose to the *customer* how and when any fee for its service is payable and in what circumstances a refund may be payable, including how and when a refund is available under section 155 of the CCA.

[Note: paragraphs 2.2 and 4.17b of CBG]

[Note: article 21(b) and (c) of the *Consumer Credit Directive*]

Credit broking information notice

4.4.3

R

- (1) A *firm* must not:
- (a) request, claim, demand, initiate or take payment of a charge from a *customer*, or from the *customer's* payment account, in connection with services it has provided or is to provide; or
 - (b) if the purpose, or one of the purposes, is to collect such a charge from a *customer*, invite or induce a *customer* to provide information in relation to a payment card or instrument that would enable a payment from the *customer's* payment account to be initiated by or through the *firm* or a third party or facilitate the provision of that information by a *customer*;
- unless that *firm* has met the conditions in both (2) and (3) in respect of that charge.
- (2) The first condition referred to in (1) is that the *firm* has sent a notice on paper or in another *durable medium* to the *customer* setting out the following clearly, concisely and in plain language (in this *rule* and ■ CONC 4.4.5 G referred to as the "information notice"):
- (a) the legal name of the *firm* as it appears in the *Financial Services Register*;
 - (b) if the *firm* is not a *lender*, a statement that the *firm* is a *credit broker* and that it is not a *lender*;
 - (c) if the *firm* is also a *lender*, a statement that the *firm* is acting as a *credit broker* and that it is not acting as a *lender*;
 - (d) a statement that the *customer* will be required, or (where relevant) may be required, to pay a charge in connection with the *firm's* services;
 - (e) the amount of the charge, or, where that amount is not ascertainable at the time the notice is sent, the basis on which it will be calculated; and
 - (f) when and by what method the *firm* will initiate or take payment of the charge.
- (3) The second condition referred to in (1) is that the *firm* has received from the *customer* a reply to the information notice (in this *rule* and ■ CONC 4.4.5 G referred to as the "customer confirmation") on paper or in another *durable medium* in which the *customer* acknowledges receipt of the information notice and confirms that he is aware of its contents.
- (4) The information notice may also contain the *firm's* trading name, address and other contact details but must not contain any other statements or information additional to those required by (2).
- (5) For the purposes of this *rule*:
- (a) references to "charge" include any fee, charge or financial consideration however described;
 - (b) it is immaterial whether the charge is payable to the *firm* or to a third party.
- (6) The *firm* must keep a record of:

4.4.4

R

■ CONC 4.4.3 R does not apply where:

- (a) each information notice; and
- (b) each customer confirmation.

- (1) the *customer* indicates to the *firm* that he wishes to enter into a *credit agreement* secured by a *legal or equitable mortgage on land*;
- (2) the *firm* makes it clear to the *customer* that it is willing to carry on *credit broking* for that *customer* only in relation to *credit agreements* secured by a *legal or equitable mortgage on land*; and
- (3) the *firm* does not indicate (by express words or otherwise) that it is willing to carry on *credit broking* for that *customer* in relation to *credit agreements* other than *credit agreements* secured by a *legal or equitable mortgage on land*.

4.4.5

G

- (1) ■ CONC 4.4.3 R prohibits a *firm* from asking a *customer* for any payment details, including the card number and security code of a debit card or a credit card, or using those payment details, without first sending an information notice to the *customer* and receiving a customer confirmation.
- (2) ■ CONC 4.4.3 R applies in respect of any sum due from a *customer*, however it is described and irrespective of whether it is payable to the *firm* or a third party (for example, a *firm* cannot avoid the application of this *rule* by describing a charge as a “membership fee” or a “web registration fee”). The fact that a fee or charge may be financed by *credit* does not take the fee or charge outside the *rule*.
- (3) The information notice must not contain anything other than the statements and information required by ■ CONC 4.4.3R (2), except for the *firm's* trading name, address and other contact details. It should set out the required information clearly and concisely, in plain language. The information notice must be sent to the *customer* in a *durable medium*, for example on paper, as an email, or as an attachment to an email: it is insufficient to make the notice available on a website or to email a link to a webpage that contains the relevant information and statements.
- (4) The *firm* should not ask for or take the *customer's* payment details until it has received the customer confirmation. This means, for example, that *firms* should construct their websites so that *customers* cannot access any webpage that enables them to input their payment details before they have received the information notice and given the customer confirmation.
- (5) ■ CONC 4.4.3 R applies to each *firm* in a chain of *credit brokers* separately. If *firm A* introduces the *customer* to *firm B* (where B is a *credit broker*), any information notice given by A cannot cover fees which B might charge: B will have to issue its own information notice to the *customer*, and the *customer* will have to provide a separate

customer confirmation, before B can ask for or make use of the *customer's* payment details.

- (6) ■ CONC 4.4.3 R does not apply to *credit broking* that relates only to *credit agreements* secured on *land*.

4.5 Commissions

Application

4.5.1

R

- (1) ■ CONC 4.5.2 G applies to a *firm* with respect to *consumer credit lending*.
- (2) ■ CONC 4.5.3 R and ■ CONC 4.5.4 R apply to a *firm* with respect to *credit broking* in relation to:
 - (a) *regulated credit agreements*; and
 - (b) *regulated consumer hire agreements*.
- (3) ■ CONC 4.5.3 R and ■ CONC 4.5.4 R also apply to a *firm* carrying on the activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to:
 - (a) *credit agreements* that would be *regulated credit agreements* but for the *relevant provisions*; and
 - (b) *consumer hire agreements* that would be *regulated consumer hire agreements* but for articles 60O and 60Q of the *Regulated Activities Order*.

Commissions lenders to credit brokers

4.5.2

G

A *lender* should only offer to, or enter into with, a *firm* a commission agreement providing for differential commission rates or providing for payments based on the volume and profitability of business where such payments are justified based on the extra work of the *firm* involved in that business.

[Note: paragraph 5.5 (box) of *ILG*]

Commissions: credit brokers

4.5.3

R

A *credit broker* must disclose to a *customer* in good time before a *credit agreement* or a *consumer hire agreement* is entered into, the existence of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner* or a third party in relation to a *credit agreement* or a *consumer hire agreement*, where knowledge of the existence or amount of the commission could actually or potentially:

- (1) affect the impartiality of the *credit broker* in recommending a particular product; or

(2) have a material impact on the *customer's* transactional decision.

[Note: paragraph 3.7i (box) and 3.7j of *CBG* and 5.5 (box) of *ILG*]

4.5.4

R

At the request of the *customer*, a *credit broker* must disclose to the *customer*, in good time before a *regulated credit agreement* or a *regulated consumer hire agreement* is entered into, the amount (or if the precise amount is not known, the likely amount) of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner* or a third party.

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

4.6 Pre-contract disclosure: continuous payment authorities

Application

4.6.1

R

- (1) This section applies to:
- (a) a *firm* with respect to *consumer credit lending*; or
 - (b) a *firm* with respect to *consumer hiring*; or
 - (c) a *firm* with respect to *operating an electronic system in relation to lending* in relation to a prospective *borrower* under a *P2P agreement*.

Disclosure of continuous payment authorities

4.6.2

R

- (1) Before entering into a *regulated credit agreement* or *regulated consumer hire agreement*, or before a *P2P agreement* is entered into, under which the *customer* may grant a *continuous payment authority*, the *firm* must provide the *customer* with an adequate explanation of the matters in (2).
- (2) The matters referred to in (1) are:
- (a) what a *continuous payment authority* is and how it works;
 - (b) how the *continuous payment authority* will be applied by the *firm*, including where the *firm* provides *high-cost short-term credit* that it may only be used twice to collect the whole sum due in relation to the agreement or where the agreement provides for repayment in instalments, in relation to an instalment;
 - (c) how the *customer* can cancel the *continuous payment authority*;
 - (d) whether alternative repayment options are available;
 - (e) the choice of an appropriate due date for payment;
 - (f) the choice of an alternative payment date (if applicable);
 - (g) the consequences if sufficient funds are not available on the due date (or an alternative payment date if agreed);
 - (h) whether further attempts may be made to collect payment and, if so, the basis on which further attempts would be made, the days or period over which the further attempts would be made and the frequency of the further attempts;
 - (i) other than in relation to *high-cost short-term credit*, whether part payment (a sum due which less than the full sum due at the time the *firm's* payment request is made) may be sought and, if

so, the basis on which and frequency with which payment would be sought and whether part payments would be subject to a minimum amount or percentage;

- (j) in relation to *high-cost short-term credit*, the *firm* will not seek part payment (a sum due which is less than the full sum due at the time the *firm's* payment request is made) unless the *firm* is willing to accept such less sum and, after being notified of that sum and when a payment request would be made, the *customer* has given express consent to the *firm* to make such a payment request; and
- (k) whether default fees and other charges may be added and, if so, the circumstances in which these may be incurred and the amount of such fees and charges or the basis on which they will be calculated.

[Note: paragraph 3.9miii of DCG]

4.6.3 **R** A *firm* must include the terms of the *continuous payment authority*, in plain and intelligible language, as part of the *credit agreement* or *consumer hire agreement* presented to the *customer* or *P2P agreement* presented to the *borrower*.

[Note: paragraph 3.9miii of DCG]

4.6.4 **R** [deleted]

Agreements where there is a guarantor etc

- 4.6.5** **R**
- (1) This *rule* applies if:
 - (a) a *firm* is to enter into a *regulated credit agreement* or a *regulated consumer hire agreement*, or is to facilitate the entry into a *P2P agreement*;
 - (b) an *individual* other than the *borrower* or the *hirer* (in this *rule* referred to as "the guarantor") is to provide a guarantee or an indemnity (or both) in relation to the *regulated credit agreement*, the *regulated consumer hire agreement* or the *P2P agreement*; and
 - (c) the guarantor is to grant a *continuous payment authority*.
 - (2) The *firm* must, before the guarantor provides the guarantee or the indemnity, provide the guarantor with an adequate explanation of the matters in ■ CONC 4.6.2R(2).
 - (3) For the purposes of (2), ■ CONC 4.6.2R(2) applies as if references to the *customer* were references to the guarantor.
 - (4) The *firm* must include the terms of the *continuous payment authority*, in plain and intelligible language, in the document that includes the guarantee or the indemnity (or both).
 - (5) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

4.7 Information to be provided on entering a current account agreement

Application

- 4.7.1 **R** This section applies to a *firm* with respect to *consumer credit lending*.

Information on entering into current account

- 4.7.2 **R**
- (1) When a *firm* enters into a current account agreement where:
 - (a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and
 - (b) if the account-holder did so, this would be a *regulated credit agreement*;

the current account agreement must contain the information in (2) and (3).

[Note: section 74A(1) of CCA]
 - (2) The information required by (1) is:
 - (a) the rate of interest charged on the amount by which the account-holder overdraws on the current account or exceeds the pre-arranged overdraft limit;
 - (b) any conditions applicable to that rate;
 - (c) any reference rate on which that rate is based;
 - (d) information on any changes to that rate of interest (including the periods that the rate applies to and any conditions or procedure applicable to changing that rate); and
 - (e) any other charges payable by the account holder under the agreement (and the conditions under which those charges may be varied).

[Note: section 74A(2) of CCA]
 - (3) Where different rates of interest are charged in different circumstances, the *firm* must provide the information in (2)(a) to (d) in respect of each rate.

[Note: section 74A(4) of CCA]

[Note: article 18 of the *Consumer Credit Directive*]



4.8 Pre-contract: unfair business practices: consumer credit lending

Application

4.8.1 **R** This section applies to a *firm* carrying on *consumer credit lending*.

Unfair business practices

4.8.2 **R** A *firm* must not unfairly encourage, incentivise or induce a *customer* to enter into a *regulated credit agreement* quickly without allowing the *customer* time to consider the pre-contract information under section 55 of the CCA and the explanations provided under ■ CONC 4.2.5 R.

[Note: paragraph 5.10 of ILG]

4.8.3 **G** Stating an end date for a promotion would not amount to the behaviour in ■ CONC 4.8.2 R.

[Note: paragraph 5.10 (box) of ILG]

4.8.4 **R** A *firm* must not unfairly encourage, incentivise or induce a *customer* to enter into a *regulated credit agreement* for an amount higher than the *customer* requests.

[Note: paragraph 5.11 of ILG]

4.8.5 **G** Merely offering a *customer* more *credit* than the *customer* requested would not amount to the behaviour in ■ CONC 4.8.4 R where:

- (1) the offer of the higher amount was based on a proper *creditworthiness assessment*; or
- (2) the *firm* offers more advantageous terms, conditions or prices to *customers* for larger loans, provided that such offers are sufficiently transparent and a proper *creditworthiness assessment* has been carried out;

and the *customer* was not pressurised or unfairly coerced into accepting the higher amount of *credit*.

[Note: paragraph 5.11 (box) of ILG]

4.8.6

R

A *firm* must not lead a *customer* to believe that the *customer's* current debt repayments can be reduced under a *regulated credit agreement* over the same term when this is not the case.

[Note: paragraph 5.13 of *ILG*]