

## Chapter 4

# Pre-contractual requirements

**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*.