Chapter 5

Responsible lending
5.1 Application [deleted]
5.2 Creditworthiness assessment: before agreement [deleted]

[deleted]
Application

5.2A.1 Subject to CONC 5.2A.2, this section applies to a firm with respect to consumer credit lending.

5.2A.2 This section does not apply to:

(1) an agreement under which a firm takes an article in pawn and under the terms of the agreement:
   (a) the customer’s total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article pawned by the customer; and
   (b) the effect of the passing of property in the pawned article to the firm under section 120 of the CCA, or of a sale of the article under section 121 of the CCA, would, therefore, be (at the very least) to discharge the debt secured by the pawn and any other obligation to pay a sum of money under the agreement including any expenses of sale;

(2) 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 to exceed a pre-arranged overdraft limit; and
   (b) if the account-holder did so, this would be a regulated credit agreement (overrunning);

(3) a non-commercial agreement; or

(4) a small borrower-lender-supplier agreement which is a restricted-use credit agreement.

Interpretation

5.2A.3 In this section, references to ‘repayment’ refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a regulated credit agreement or any charge payable by the customer under a hire-purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates).
A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

(1) entering into a regulated credit agreement; or

(2) significantly increasing the amount of credit provided under a regulated credit agreement; or

(3) significantly increasing a credit limit for running-account credit under a regulated credit agreement.

The firm must not take a step in (1) to (3) unless it can demonstrate that it has, before doing so:

(1) undertaken a creditworthiness assessment and, where relevant, the assessment under (guarantors) in accordance with the rules set out in this section; and

(2) had proper regard to the outcome of that assessment in respect of affordability risk.

If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last creditworthiness assessment, a cumulative increase that is significant, then a further creditworthiness assessment is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.

A firm must base its creditworthiness assessment on sufficient information:

(1) of which it is aware at the time the creditworthiness assessment is carried out;

(2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and

the information must enable the firm to carry out a reasonable creditworthiness assessment.

CONC 5.2A.20R to CONC 5.2A.25G contain rules and guidance in relation to the factors that should be taken into account in an individual case when deciding how much information is sufficient for the purposes of the creditworthiness assessment, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

Rules and guidance in this section apply in relation to carrying out a creditworthiness assessment.
The subject matter of the creditworthiness assessment

5.2A.10 The firm must consider:

(1) the risk that the customer will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and

(2) the risk to the customer of not being able to make repayments under the agreement in accordance with CONC 5.2A.12R (referred to as ‘affordability risk’ in this section).

5.2A.11 In relation to CONC 5.2A.10R, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the creditworthiness assessment.

5.2A.12 The firm must consider the customer’s ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an open-end agreement, within a reasonable period;

(2) out of, or using, one or more of the following:
   (a) the customer’s income;
   (b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement; and/or
   (c) savings or other assets where the customer has indicated clearly an intention to repay (wholly or partly) using them;

(3) without the customer having to borrow to meet the repayments;

(4) without failing to make any other payment the customer has a contractual or statutory obligation to make; and

(5) without the repayments having a significant adverse impact on the customer’s financial situation.

5.2A.13 If the customer intends to make repayments (wholly or partly) using savings or other assets, the firm must take into account:

(1) the purpose for which the savings or assets are or will be held;

(2) the likelihood of the savings or assets being available to make repayments under the agreement; and

(3) any significant adverse impact on the customer’s financial situation of using those savings or assets.
When considering affordability risk, the *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

### The customer’s income and expenditure

1. This rule applies unless:
   1. the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *customer* is able to make repayments in accordance with CONC 5.2A.12R, so as to make the actions described in (2) to (4) disproportionate; or
   2. the *customer* has indicated clearly an intention to repay wholly using savings or other assets (see CONC 5.2A.13R).

2. The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *customer’s* current income.

3. Where it is reasonably foreseeable that there is likely to be a reduction in the *customer’s* income:
   1. during the term of the agreement; or
   2. in the case of an *open-end agreement*, during the likely duration of the *credit* (see CONC 5.2A.26R),
   which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that reduction.

4. The *firm* must take account of the *customer’s* income it has determined or estimated in accordance with (2) and (3).

5. The *firm* may only take into account an expected future increase in the *customer’s* income where the *firm* reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

1. A *firm* that proposes to rely on the exception in CONC 5.2A.15R(1)(a) should keep in mind that the burden would be on the *firm* to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the *customer’s* income disproportionate.

2. An estimate of the *customer’s* income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

3. For the purpose of considering the *customer’s* income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the *customer* without independent evidence (for example, in the form of information supplied by a *credit reference agency* or documentation of a third party supplied by the third party or by the *customer*).
(4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out. If, in such a case, the customer's income does not increase in line with expectations, the firm should consider deferring or limiting the obligation to repay until the customer's income has reached an appropriate level.

(5) Income can include income other than salary and wages.

5.2A.17

(1) This rule:

(a) applies only where CONC 5.2A.15R also applies; and

(b) does not apply where the firm can demonstrate that it is obvious in the circumstances of the particular case that the customer's non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.

(2) The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure.

(3) Where it is reasonably foreseeable that there is likely to be an increase in the customer's non-discretionary expenditure:

(a) during the term of the agreement; or

(b) in the case of an open-end agreement, during the likely duration of the credit (see CONC 5.2A.26R),

which could have a material impact on affordability risk, the firm must take reasonable steps to estimate the amount of that increase.

(4) The firm must take account of the customer's non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).

(5) The firm may only take into account an expected future decrease in non-discretionary expenditure where the firm reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an open-end agreement, during the likely duration of the credit.

5.2A.18

(1) Non-discretionary expenditure referred to in CONC 5.2A.17R includes payments needed to meet priority debts and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the customer has a contractual or statutory obligation to make, such as payment obligations arising under a credit agreement or a mortgage contract. Where there is a reasonable expectation that the customer will have responsibility to pay only a share or part of a payment required pursuant to a contractual or statutory obligation then the firm may, in appropriate cases, take this into account.
An analysis of the size of the customer’s debts compared to the customer’s income may therefore form part of the creditworthiness assessment where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in CONC 5.2A.20.

Non-discretionary expenditure includes expenditure for other persons whose financial obligations the customer meets wholly or in part. Where the firm has under CONC 5.2A.12(2)(b) taken into account income received by the customer jointly with another person or income received by a person other than the customer it should also take into account non-discretionary expenditure relating to that other person. In those circumstances, references in this section to non-discretionary expenditure of the customer should be taken to include the non-discretionary expenditure of the other person.

An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

Where the firm can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the customer’s income therefore applies, the firm is similarly not required to determine or estimate the customer’s non-discretionary expenditure.

(1) For the purpose of considering the customer’s non-discretionary expenditure under CONC 5.2A.17R, the firm may take into account statistical data unless it knows or has reasonable cause to suspect that the customer’s non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the customer’s situation.

(2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the firm is aware, or has reasonable cause to be aware from information in its possession, that the composition of the customer’s household, or the number of dependants that the customer has, or the level of the customer’s existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

Scope, extent and proportionality of assessment

(1) The extent and scope of the creditworthiness assessment, and the steps that the firm must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.

(2) The firm must consider:

(a) the types of information to use in the creditworthiness assessment;

(b) the content and level of detail of the information to use;

(c) whether the information in the firm’s possession is sufficient;
(d) whether and to what extent to obtain additional information from the customer;
(e) whether and to what extent to obtain information from a credit reference agency;
(f) any other sources of information to use;
(g) whether and to what extent to verify the accuracy of the information that is used;
(h) the degree of evaluation and analysis of the information that is used; and
(i) the steps to take to determine or estimate the customer’s income or non-discretionary expenditure (where such a determination or estimate is required),

having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the firm must have regard when complying with (2) and deciding what steps are needed to make the creditworthiness assessment a reasonable one include each of the following where applicable to the agreement:

(a) the type of credit;
(b) the amount of the credit or, where applicable, the credit limit;
(c) the duration (or likely duration) of the credit;
(d) the frequency of the repayments;
(e) the amounts of the repayments;
(f) the total amount payable;
(g) the total charge for credit;
(h) the annual percentage rate of charge;
(i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the customer under a hire-purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates) is fixed or variable;

(j) any other costs which will or may be payable by or on behalf of the customer in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the customer under a hire-purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates; and

(k) any other potential adverse consequences for the customer arising under the agreement from a failure to make a repayment by the due date.

(1) The firm may have regard, where appropriate, to the purpose for which the customer intends to use the credit.

(2) When considering, having regard to the factors in CONC 5.2A.20R, what steps the firm needs to undertake to make the creditworthiness assessment a reasonable one, the firm should consider whether the
factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the firm should weigh up the factors before deciding what type of creditworthiness assessment is required.

5.2A.22 The firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that:

1. the customer is in, has recently experienced, or is likely to experience, financial difficulties (see CONC 1.3); or

2. the customer is particularly vulnerable, for example because the customer has mental health difficulties or mental capacity limitations (see CONC 2.10 and CONC 7.2).

5.2A.23 The firm may have regard, where appropriate, to information obtained in the course of previous dealings with the customer. However, the firm should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

5.2A.24 The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.

Factors that will affect that level of risk include the actual or potential cost of the credit and the total amount payable in absolute terms and relative to the customer's financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the total charge for credit are low, the amount of information that is sufficient to support a reasonable creditworthiness assessment may be less than would be required:

1. in the case of more expensive credit or credit that is higher in amount; or
2. where it is known that the customer's financial situation is such that the credit may be expected to have a more significant impact.

5.2A.25 (1) In relation to CONC 5.2A.24G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:

a. the total value of the customer's outstanding debts relative to the customer's income is high; or

b. there is a high likelihood that the customer will not make repayments under the agreement by their due dates.

(2) In relation to CONC 5.2A.25G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.
Open-end agreements

5.2A.26 In relation to an open-end agreement, the firm must make a reasonable assumption about the likely duration of the credit which should take into account:

1. the terms and conditions of the agreement;
2. any pre-contractual disclosure and explanation given to the customer under the CCA or CONC; and
3. the customer's intentions, where known to the firm.

Assumptions in relation to running-account credit

5.2A.27 (1) In relation to entering into a regulated credit agreement for running-account credit, the firm must assume that the customer draws down the entire credit limit at the earliest opportunity and repays by equal instalments over a reasonable period.

(2) In relation to significantly increasing the credit limit that applies to an existing regulated credit agreement for running-account credit, the firm must assume that the customer draws down the entire available balance up to the increased credit limit at the earliest opportunity and repays by equal instalments over a reasonable period.

(3) If, after considering the individual circumstances of the particular customer of which the firm is aware at the time the creditworthiness assessment is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of credit and repayments over the duration or likely duration of the credit, then the firm must do so and these assumptions must be reasonable ones.

(4) The firm must set the credit limit in the light of the assumptions in (1) to (3).

5.2A.28 (1) Unless (2) applies, the firm should, when making an assumption about the length of a reasonable period for repayment for the purposes of CONC 5.2A.27R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the credit limit. The firm should take into account the terms and conditions of a loan likely to be available to that customer (whether from the firm or from another lender) and any other factors that the firm reasonably considers to be relevant.

(2) If, however, after considering the individual circumstances of the particular customer of which the firm is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the firm may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the customer complied with those terms, the drawdown of the credit limit would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent amount.
(3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of [CONC 5.2A.27R(3)], in addition to the assumptions described in [CONC 5.2A.27R(1) or (2)]. In those circumstances, the firm should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of its customers in relation to that product or type of product, or of customers of that type generally, but should also consider any factors particular to the individual customer, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in [CONC 5.2A.27R(1) or (2)], as well as in respect of the subsequent duration of the credit, depending on those factors.

### Lending to joint borrowers and businesses

5.2A.29

The firm may need to take into account the different circumstances that may surround a customer where the customer is borrowing for business purposes. For example, it may be reasonable to take into account the customer’s business plan, although the creditworthiness assessment should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the customer is less regular than for other types of customer.

5.2A.30

(1) Where there are customers acting together as joint borrowers, the firm should consider whether it may be appropriate to carry out a creditworthiness assessment separately for each customer (as well as one for them together), having regard to the risk to that customer arising from the agreement were the customer to be treated as being solely responsible for obligations of the joint borrowers under the agreement.

(2) Where the borrower is a partnership or one or more members of an unincorporated association acting as agent for other such members, the partners or members may be treated as a single customer for the purposes of the creditworthiness assessment.

### Creditworthiness assessment where there is a guarantor

5.2A.31

(1) This rule applies if, in relation to a regulated credit agreement:

   (a) an individual other than the borrower (in this section referred to as ‘the guarantor’) is to provide a guarantee or an indemnity (or both) (in this rule and [CONC 5.2A.32G referred to as ‘the guarantee’]); and

   (b) the firm is required to undertake a creditworthiness assessment in respect of the borrower.

(2) Before entering into the regulated credit agreement or significantly increasing the amount of credit provided under the agreement or significantly increasing a credit limit for running-account credit under the agreement, the firm must undertake a reasonable assessment of the potential for the guarantor’s commitments in respect of the agreement to have a significant adverse impact on the guarantor’s financial situation.
(3) The firm must base the assessment under (2) on sufficient information:

(a) of which it is aware at the time the assessment is carried out;

(b) obtained, where appropriate, from the guarantor or from the borrower on the guarantor’s behalf, and where necessary from a credit reference agency, and

the information must enable the firm to carry out a reasonable assessment.

(4) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

(1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the borrower, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.

(2) If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last assessment under CONC 5.2A.31R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.

(3) In this guidance, references to ‘payment’ refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).

(4) The firm should, when carrying out an assessment under CONC 5.2A.31R(2), have regard to CONC 5.2A.8G to CONC 5.2A.24G(1) (excluding CONC 5.2A.9R, CONC 5.2A.14R, CONC 5.2A.16G(4), CONC 5.2A.20R(3) and CONC 5.2A.21G(1)), CONC 5.2A.29G and CONC 5.2A.30G but as if:

(a) each of those provisions that is a rule were guidance and as if ‘should’ appeared in that rule instead of ‘must’ or ‘may’;

(b) references to ‘agreement’ are to the ‘guarantee’;

(c) subject to (g) below, references to ‘the customer’ or ‘borrower’ are references to the ‘guarantor’;

(d) references to ‘repayments’ are references to ‘payments’;

(e) references to ‘repay’ are references to ‘pay’;

(f) references to the ‘creditworthiness assessment’ are references to the assessment under CONC 5.2A.31R(2);

(g) references in CONC 5.2A.20R(2)(d) and CONC 5.2A.23G to ‘the customer’ are to the ‘guarantor’ as well as ‘the customer’; and

(h) the reference in CONC 5.2A.20R(2) to the factors listed in CONC 5.2A.20R(3) is to the factors listed in CONC 5.2A.32G(5).

(5) The factors to which the firm should have regard for the purposes of CONC 5.2A.19R(2) when deciding what steps should be taken to make the assessment under CONC 5.2A.31R(2) a reasonable one include each of the following:

(a) the total potential liability of the guarantor under the guarantee;
(b) the duration (or likely duration) of the guarantee;
(c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and
(d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.

(6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor’s financial circumstances, where known.

(7) The provision of the guarantee, and the reasonable assessment of the guarantor under CONC 5.2A.31R(2), do not remove or reduce the obligation on the firm to carry out a reasonable creditworthiness assessment of the borrower. Firms are reminded of the rule in CONC 5.2A.14R that, in considering affordability risk for the borrower, a firm must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of security.

Policies and procedures for creditworthiness assessment

5.2A.33 A firm must:

establish, implement and maintain clear and effective policies and procedures:
(a) to enable it to carry out creditworthiness assessments or assessments under CONC 5.2A.31R(2); and
(b) setting out the principal factors it will take into account in carrying out creditworthiness assessments or assessments under CONC 5.2A.31R(2);

set out the policies and procedures in (1) in writing, and (other than in the case of a sole trader) have them approved by its governing body or senior personnel;

assess and periodically review:
(a) the effectiveness of the policies and procedures in (1); and
(b) the firm’s compliance with those policies and procedures and with its obligations under CONC 5.2A;

in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the firm’s compliance with its obligations;

maintain a record, on paper or in electronic form, of each transaction where a regulated credit agreement is entered into, or where there is a significant increase in the amount of credit provided under a regulated credit agreement or a credit limit for running-account credit under a regulated credit agreement, sufficient to demonstrate that:
(a) a creditworthiness assessment or an assessment under CONC 5.2A.31R(2) was carried out where required; and

(b) the creditworthiness assessment or the assessment under CONC 5.2A.31R(2) was reasonable and was undertaken in accordance with CONC 5.2A,

and so to enable the FCA to monitor the firm’s compliance with its obligations under CONC 5.2A; and

(other than in the case of a sole trader) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the firm’s compliance with (1) to (5).

5.2A.34 Firms are reminded of the guidance on record-keeping in SYSC 9.1.4G and 9.1.5G.

Unfair business practices

5.2A.35 A firm must not complete some or all of those parts of an application for credit under a regulated credit agreement intended to be completed by the customer, without the consent of the customer or unless the customer has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.2A.36 A firm must not accept an application for credit under a regulated credit agreement where the firm knows or has reasonable cause to suspect that the customer has not been truthful in completing the application in relation to information relevant to the creditworthiness assessment.

5.2A.37 An example of when a firm has reasonable cause to suspect that the customer has not been truthful may be where information supplied by the customer concerning income or employment status is clearly inconsistent with other information of which the firm is aware.
5.3 Conduct of business in relation to creditworthiness and affordability [deleted]
5.4 Conduct of business: credit brokers

Application

This section applies to a firm with respect to credit broking.

Conduct of business

(1) In giving explanations or advice, or in making recommendations, a firm must pay due regard to the customer’s needs and circumstances.

(2) In complying with (1) a firm must pay due regard to whether the credit product is affordable and whether there are any factors that the firm knows, or reasonably ought to know, that may make the product unsuitable for that customer.

[Note: paragraphs 4.32 to 4.36 of CBG]

A firm which undertakes to search the product market or a part of it before effecting an introduction must, before doing so, search the product market to the extent stated to the customer.

[Note: paragraph 4.41j of CBG]
5.5 Creditworthiness assessment: P2P agreements [deleted]
5.5A Creditworthiness assessment: P2P agreements

Application

Subject to [CONC 5.5A.2R], this section applies to a firm with respect to operating an electronic system in relation to lending in relation to a borrower or a prospective borrower under a P2P agreement.

This section does not apply in relation to:

1. an agreement under which a person takes an article in pawn and under the terms of the agreement:
   a. the borrower’s total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article pawned by the borrower; and
   b. the effect of the passing of property in the pawned article to the person under section 120 of the CCA, or of a sale of the article under section 121 of the CCA, would, therefore, be (at the very least) to discharge the debt secured by the pawn and any other obligation to pay a sum of money under the agreement including any expenses of sale; or

2. 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 to exceed a pre-arranged overdraft limit; and
   b. if the account-holder did so, this would be a P2P agreement (overrunning).

This section contains rules and guidance that apply to a person operating an electronic system that facilitates persons becoming lenders and borrowers under P2P agreements, in contrast to [CONC 5.2A] which applies to a lender engaged in consumer credit lending.

Where [CONC 5.2A] applies to a lender, and [CONC 5.5A] applies to the person operating the electronic system, each will be subject to a separate obligation to undertake a creditworthiness assessment. However, firms are reminded of [SYSC 8] which permits outsourcing of operational functions subject to certain requirements (and with the
firm outsourcing functions remaining fully responsible for discharging all of its obligations under the regulatory system).

Interpretation

5.5A.4 In this section, references to ‘repayment’ refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a P2P agreement or any charge payable by the borrower under a hire-purchase agreement in respect of an exercise of an option to purchase the goods to which the agreement relates) and references to a ‘borrower’ include, where the context so allows, references to a prospective borrower.

Creditworthiness assessment

5.5A.5 A firm must undertake a reasonable assessment of the creditworthiness of a borrower before:

(1) a P2P agreement is made; or

(2) the amount of credit provided under a P2P agreement is significantly increased; or

(3) a credit limit for running-account credit under a P2P agreement is significantly increased.

5.5A.6 The firm must not facilitate the taking of a step in 5.5A.5R(1) to (3) unless it can demonstrate that it has, before doing so:

(1) undertaken a creditworthiness assessment and, where relevant, the assessment under 5.5A.32R(2) ( guarantors) in accordance with the rules set out in this section; and

(2) had proper regard to the outcome of that assessment in respect of affordability risk.

5.5A.7 If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last creditworthiness assessment, a cumulative increase that is significant, then a further creditworthiness assessment is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.

5.5A.8 A firm must base its creditworthiness assessment on sufficient information:

(1) of which it is aware at the time the creditworthiness assessment is carried out;

(2) obtained, where appropriate, from the borrower, and where necessary from a credit reference agency, and

the information must enable the firm to carry out a reasonable creditworthiness assessment.
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5.5A.9 | G | CONC 5.5A.21R to CONC 5.5A.26G contain rules and guidance in relation to the factors that should be taken into account in an individual case when deciding how much information is sufficient for the purposes of the creditworthiness assessment, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

5.5A.10 | R | Rules and guidance in this section apply in relation to carrying out a creditworthiness assessment.

The subject matter of the creditworthiness assessment

5.5A.11 | R | The firm must consider:

(1) the risk that the borrower will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and

(2) the risk to the borrower of not being able to make repayments under the agreement in accordance with CONC 5.5A.13R (referred to as ‘affordability risk’ in this section).

5.5A.12 | G | In relation to CONC 5.5A.11R, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the creditworthiness assessment.

5.5A.13 | R | The firm must consider the borrower’s ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an open-end agreement, within a reasonable period;

(2) out of, or using, one or more of the following:

(a) the borrower’s income;

(b) income from savings or assets jointly held by the borrower with another person, income received by the borrower jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the borrower to make repayments under the agreement; and/or

(c) savings or other assets where the borrower has indicated clearly an intention to repay (wholly or partly) using them;

(3) without the borrower having to borrow to meet the repayments;

(4) without failing to make any other payment the borrower has a contractual or statutory obligation to make; and

(5) without the repayments having a significant adverse impact on the borrower’s financial situation.

5.5A.14 | R | If the borrower intends to make repayments (wholly or partly) using savings or other assets, the firm must take into account:
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(1) the purpose for which the savings or assets are or will be held;

(2) the likelihood of the savings or assets being available to make repayments under the agreement; and

(3) any significant adverse impact on the borrower’s financial situation of using those savings or assets.

5.5A.15 When considering affordability risk, the firm must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of security.

The borrower’s income and expenditure

5.5A.16 (1) This rule applies unless:

   (a) the firm can demonstrate that it is obvious in the circumstances of the particular case that the borrower is able to make repayments in accordance with CONC 5.5A.13R, so as to make the actions described in (2) to (4) disproportionate; or

   (b) the borrower has indicated clearly an intention to repay wholly using savings or other assets (see CONC 5.5A.14R).

(2) The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the borrower’s current income.

(3) Where it is reasonably foreseeable that there is likely to be a reduction in the borrower’s income:

   (a) during the term of the agreement; or

   (b) in the case of an open-end agreement, during the likely duration of the credit (see CONC 5.5A.27R),

      which could have a material impact on affordability risk, the firm must take reasonable steps to estimate the amount of that reduction.

(4) The firm must take account of the borrower’s income it has determined or estimated in accordance with (2) and (3).

(5) The firm may only take into account an expected future increase in the borrower’s income where the firm reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an open-end agreement, during the likely duration of the credit.

5.5A.17 (1) A firm that proposes to rely on the exception in CONC 5.5A.16R(1)(a) should keep in mind that the burden would be on the firm to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the borrower’s income disproportionate.

(2) An estimate of the borrower’s income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.
(3) For the purpose of considering the borrower’s income under CONC 5.2A.16R, it is not generally sufficient to rely solely on a statement of current income made by the borrower without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the borrower).

(4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out.

(5) Income can include income other than salary or wages.

5.5A.18 R

(1) This rule:

(a) applies only where CONC 5.5A.16R also applies; and

(b) does not apply where the firm can demonstrate that it is obvious in the circumstances of the particular case that the borrower’s non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.

(2) The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the borrower’s current non-discretionary expenditure.

(3) Where it is reasonably foreseeable that there is likely to be an increase in the borrower’s non-discretionary expenditure:

- during the term of the agreement; or
- in the case of an open-end agreement, during the likely duration of the credit (see CONC 5.5A.27R),

which could have a material impact on affordability risk, the firm must take reasonable steps to estimate the amount of that increase.

(4) The firm must take account of the borrower’s non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).

(5) The firm may only take into account an expected future decrease in non-discretionary expenditure where the firm reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an open-end agreement, during the likely duration of the credit.

5.5A.19 G

(1) Non-discretionary expenditure referred to in CONC 5.5A.18R includes payments needed to meet priority debts and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the borrower has a contractual or statutory obligation to make, such as payment obligations arising under a credit agreement or a mortgage contract. Where there is a reasonable expectation that the borrower will have responsibility to pay only a share or a part of a payment required
pursuant to a contractual or statutory obligation then the firm may, in appropriate cases, take this into account.

(2) An analysis of the size of the borrower’s debts compared to the borrower’s income may therefore form part of the creditworthiness assessment where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in CONC 5.5A.21R.

(3) Non-discretionary expenditure includes expenditure for other persons whose financial obligations the borrower meets wholly or in part. Where the firm has under CONC 5.5A.13R(2)(b) taken into account income received by the borrower jointly with another person or income received by a person other than the borrower it should also take into account non-discretionary expenditure relating to that other person. In those circumstances, references in this section to non-discretionary expenditure of the borrower should be taken to include the non-discretionary expenditure of the other person.

(4) An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

(5) Where the firm can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the borrower’s income therefore applies, the firm is similarly not required to determine or estimate the borrower’s non-discretionary expenditure.

(1) For the purpose of considering the borrower’s non-discretionary expenditure under CONC 5.5A.18R, the firm may take into account statistical data unless it knows or has reasonable cause to suspect that the borrower’s non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the borrower’s situation.

(2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the firm is aware, or has reasonable cause to be aware from information in its possession, that the composition of the borrower’s household, or the number of dependants that the borrower has, or the level of the borrower’s existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

Scope, extent and proportionality of assessment

(1) The extent and scope of the creditworthiness assessment, and the steps that the firm must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.

(2) The firm must consider:

(a) the types of information to use in the creditworthiness assessment;
(b) the content and level of detail of the information to use;
(c) whether the information in the firm’s possession is sufficient;
(d) whether and to what extent to obtain additional information from the borrower;
(e) whether and to what extent to obtain information from a credit reference agency;
(f) any other sources of information to use;
(g) whether and to what extent to verify the accuracy of the information that is used;
(h) the degree of evaluation and analysis of the information that is used; and
(i) the steps to take to determine or estimate the borrower’s income or non-discretionary expenditure (where such a determination or estimate is required),

having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the firm must have regard when complying with (2) and deciding what steps are needed to make the creditworthiness assessment a reasonable one include each of the following where applicable to the agreement:

(a) the type of credit;
(b) the amount of the credit or, where applicable, the credit limit;
(c) the duration (or likely duration) of the credit;
(d) the frequency of the repayments;
(e) the amounts of the repayments;
(f) the total amount payable;
(g) the total charge for credit or the cost of credit;
(h) the annual percentage rate of charge;
(i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the borrower under a hire-purchase agreement in respect of an option to purchase the goods to which the agreement relates) is fixed or variable;
(j) any other costs which will or may be payable by or on behalf of the borrower in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the borrower under a hire-purchase agreement in respect of an option to purchase the goods to which the agreement relates; and
(k) any other potential adverse consequences for the borrower arising under the agreement from a failure to make a repayment by the due date.

(1) The firm may have regard, where appropriate, to the purpose for which the borrower intends to use the credit.
(2) When considering, having regard to the factors in CONC 5.5A.21R, what steps the firm needs to undertake to make the creditworthiness assessment a reasonable one, the firm should consider whether the factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the firm should weigh up the factors before deciding what type of creditworthiness assessment is required.

5.5A.23 The firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that:

(1) the borrower is in, has recently experienced, or is likely to experience, financial difficulties (see CONC 1.3); or

(2) the borrower is particularly vulnerable, for example because the borrower has mental health difficulties or mental capacity limitations (see CONC 2.10 and CONC 7.2).

5.5A.24 The firm may have regard, where appropriate, to information obtained in the course of previous dealings with the borrower. However, the firm should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

5.5A.25 (1) The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.

(2) Factors that will affect that level of risk include the actual or potential cost of the credit and the total amount payable (or, where the P2P agreement is not a regulated credit agreement, the sum of the cost of credit plus the credit limit or the total sums made available under the P2P agreement, as well as any advance payment) in absolute terms and relative to the borrower’s financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the total charge for credit are low, the amount of information that is sufficient to support a reasonable creditworthiness assessment may be less than would be required:

(a) in the case of more expensive credit or credit that is higher in amount; or

(b) where it is known that the borrower’s financial situation is such that the credit may be expected to have a more significant impact.

5.5A.26 (1) In relation to CONC 5.5A.25G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:

(a) the total value of the borrower’s outstanding debts relative to the borrower’s income is high; or
(b) there is a high likelihood that the borrower will not make repayments under the agreement by their due dates.

(2) In relation to CONC 5.5A.26G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

Open-end agreements

In relation to an open-end agreement, the firm must make a reasonable assumption about the likely duration of the credit which should take into account:

(1) the terms and conditions of the agreement;
(2) any pre-contractual disclosure and explanation given to the borrower under the CCA or CONC; and
(3) the borrower's intentions, where known to the firm.

Assumptions in relation to running-account credit

(1) In relation to a lender entering into a P2P agreement for running-account credit, the firm must assume that the borrower draws down the entire credit limit at the earliest opportunity and repays by equal instalments over a reasonable period.
(2) In relation to a lender significantly increasing the credit limit that applies to an existing P2P agreement for running-account credit, the firm must assume that the borrower draws down the entire available balance up to the increased credit limit at the earliest opportunity and repays by equal instalments over a reasonable period.
(3) If, after considering the individual circumstances of the particular borrower of which the firm is aware at the time the creditworthiness assessment is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of credit and repayments over the duration or likely duration of the credit, then the firm must do so and these assumptions must be reasonable ones.
(4) The firm must take reasonable steps to procure the lender under the P2P agreement to set the credit limit in the light of the assumptions in (1) to (3).

(1) Unless (2) applies, the firm should, when making an assumption about the length of a reasonable period for repayment for the purposes of CONC 5.5A.28R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the credit limit. The firm should take into account the terms and conditions of a loan likely to be available to that borrower (whether from the lender under the P2P agreement or from another lender) and any other factors that the firm reasonably considers to be relevant.
(2) If, however, after considering the individual circumstances of the particular borrower of which the firm is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the firm may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the borrower complied with those terms, the drawdown of the credit limit would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent amount.

(3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of CONC 5.5A.28R(3), in addition to the assumptions described in CONC 5.5A.28R(1) or (2). In those circumstances, the firm should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of borrowers under P2P agreements which it has facilitated, or of borrowers of that type generally, but should also consider any factors particular to the individual borrower, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in CONC 5.5A.28R(1) or (2), as well as in respect of the subsequent duration of the credit, depending on those factors.

Lending to joint borrowers and businesses

5.5A.30
The firm may need to take into account the different circumstances that may surround a borrower where the borrower is borrowing for business purposes. For example, it may be reasonable to take into account the borrower’s business plan, although the creditworthiness assessment should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the borrower is less regular than for other types of borrower.

5.5A.31
(1) Where there are borrowers acting together as joint borrowers, the firm should consider whether it may be appropriate to carry out a creditworthiness assessment separately for each borrower (as well as one for them together), having regard to the risk to that borrower arising from the agreement were the borrower to be treated as being solely responsible for obligations of the joint borrowers under the agreement.

(2) Where the borrower is a partnership or one or more members of an unincorporated association acting as agent for other such members, the members or partners may be treated as a single borrower for the purposes of the creditworthiness assessment.

Creditworthiness assessment where there is a guarantor

5.5A.32
(1) This rule applies if, in relation to a P2P agreement:

(a) an individual other than the borrower (in this section referred to as ‘the guarantor’) is to provide a guarantee or an indemnity (or both) (in this rule and CONC 5.2A.33G referred to as ‘the guarantee’); and
(b) the firm is required to undertake a creditworthiness assessment in respect of the borrower.

(2) Before the P2P agreement is made or the amount of credit provided under the agreement is significantly increased or a credit limit for running-account credit under the agreement is significantly increased, the firm must undertake a reasonable assessment of the potential for the guarantor’s commitments in respect of the agreement to have a significant adverse impact on the guarantor’s financial situation.

(3) The firm must base the assessment under (2) on sufficient information:

(a) of which it is aware at the time the assessment is carried out;

(b) obtained, where appropriate, from the guarantor or from the borrower on the guarantor’s behalf, and where necessary from a credit reference agency, and

the information must enable the firm to carry out a reasonable assessment.

(4) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

5.5A.33

(1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the borrower, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.

(2) If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last assessment under CONC 5.5A.32R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.

(3) In this guidance, references to payment refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).

(4) The firm should, when carrying out an assessment under CONC 5.5A.32R(2), have regard to CONC 5.5A.9G to CONC 5.5A.25G(1) (excluding CONC 5.5A.10R, CONC 5.5A.15R, CONC 5.5A.17G(4), CONC 5.5A.21R(3) and CONC 5.5A.22G(1)), CONC 5.5A.30G and CONC 5.5A.31G but as if:

(a) each of those provisions that is a rule were guidance and as if ‘should’ appeared in that rule instead of ‘must’ or ‘may’;

(b) references to ‘agreement’ are to the ‘guarantee’;

(c) subject to (g) below, references to ‘the borrower’ are references to the ‘guarantor’;

(d) references to ‘repayments’ are references to ‘payments’;

(e) references to ‘repay’ are references to ‘pay’;

(f) references to the ‘creditworthiness assessment’ are references to the assessment under CONC 5.5A.32R(2);

(g) references in CONC 5.5A.21R(2)(d) and CONC 5.5A.24G to the borrower are to the ‘guarantor’ as well as to the ‘borrower’; and
(h) the reference in CONC 5.5A.21R(2) to the factors listed in CONC 5.5A.21R(3) is to the factors listed in CONC 5.5A.33G (5).

(5) The factors to which the firm should have regard for the purposes of CONC 5.5A.21R(2) when deciding what steps should be taken to make the assessment under CONC 5.5A.32R(2) a reasonable one include each of the following:

(a) the total potential liability of the guarantor under the guarantee;
(b) the duration (or likely duration) of the guarantee;
(c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and
(d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.

(6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor’s financial circumstances, where known.

(7) The provision of the guarantee, and the reasonable assessment of the guarantor under CONC 5.5A.32R(2), do not remove or reduce the obligation on the firm to carry out a reasonable creditworthiness assessment of the borrower. Firms are reminded of the rule in CONC 5.5A.15R that, in considering affordability risk for the borrower, a firm must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of security.

Policies and procedures for creditworthiness assessment

A firm must:

(1) establish, implement and maintain clear and effective policies and procedures:

(a) to enable it to carry out creditworthiness assessments or assessments under CONC 5.5A.32R(2); and

(b) setting out the principal factors it will take into account in carrying out creditworthiness assessments or assessments under CONC 5.5A.32R(2);

(2) set out the policies and procedures in (1) in writing, and (other than in the case of a sole trader) have them approved by its governing body or senior personnel;

(3) assess and periodically review:

(a) the effectiveness of the policies and procedures in (1); and

(b) the firm’s compliance with those policies and procedures and with its obligations under CONC 5.5A;
(4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the firm’s compliance with its obligations;

(5) maintain a record, on paper or in electronic form, of each transaction where a P2P agreement is entered into, or where there is a significant increase in the amount of credit provided under a P2P agreement or a credit limit for running-account credit under a P2P agreement, sufficient to demonstrate that:

(a) a creditworthiness assessment or an assessment under CONC 5.5A.32R(2) was carried out where required; and

(b) the creditworthiness assessment or the assessment under CONC 5.5A.32R(2) was reasonable and was undertaken in accordance with CONC 5.5A,

and so to enable the FCA to monitor the firm’s compliance with its obligations under CONC 5.5A; and

(6) (other than in the case of a sole trader) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the firm’s compliance with (1) to (5).

5.5A.35 Firms are reminded of the guidance on record-keeping in SYSC 9.1.4G and 9.1.5G.

Unfair business practices

5.5A.36 A firm must not complete some or all of those parts of an application for credit under a P2P agreement intended to be completed by the borrower, without the consent of the borrower or unless the borrower has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.5A.37 A firm must inform the prospective lender under a P2P agreement where the firm knows or has reasonable cause to suspect that the borrower has not been truthful in completing the application for credit under the P2P agreement in relation to information relevant to the creditworthiness assessment.

5.5A.38 An example of when a firm has reasonable cause to suspect that the borrower has not been truthful may be where information supplied by the borrower concerning income or employment status is clearly inconsistent with other information of which the firm is aware.