

Chapter 5

Responsible lending



5.1 Application

5.1.1

R

This chapter applies to a *firm* with respect to *consumer credit lending*, unless otherwise stated in, or in relation to, a *rule*.

5.2 Creditworthiness assessment: before agreement

5.2.1

R

- (1) Before making a *regulated credit agreement* the *firm* must undertake an assessment of the creditworthiness of the *customer*.

[Note: section 55B(1) of CCA]

- (2) A *firm* carrying out the assessment required in (1) must consider:

- (a) the potential for the commitments under the *regulated credit agreement* to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time the *regulated credit agreement* is to be made; and

[Note: paragraph 4.1 of ILG]

- (b) the ability of the *customer* to make *repayments* as they fall due over the life of the *regulated credit agreement*, or for such an agreement which is an *open-end agreement*, to make *repayments* within a reasonable period.

[Note: paragraph 4.3 of ILG]

- (3) A creditworthiness assessment must be based on sufficient information obtained from:

- (a) the *customer*, where appropriate; and
(b) a *credit reference agency*, where necessary.

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

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

- (a) an agreement secured on *land*; or
(b) an agreement under which a *person* takes an article in *pawn*.

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

- (5) This *rule* does not apply, except to the agreements in (6), to:

- (a) a *non-commercial agreement*; or
(b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account; or
(c) a *small borrower-lender-supplier agreement* for restricted-use credit.

[Note: section 74 of CCA]

- (6) The agreements referred to in (5) and therefore to which this *rule* does apply are:
 - (a) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account which is an *authorised business overdraft agreement* or an *authorised non-business overdraft agreement*; and

[Note: section 74(1B) and (1C) of CCA]

- (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account 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]

- (7) Where the *borrower-lender agreement* in question is 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: article 8 of the *Consumer Credit Directive*]

Scope of the pre-contract assessments

5.2.2

R

- (1) Before entering into a *regulated credit agreement* which is excluded from ■ CONC 5.2.1 R (see (4), (5) and (6)), a *firm* must carry out an assessment of the potential for the commitments under the agreement to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time the agreement is to be made.

[Note: paragraphs 1.14 and 4.1 of *ILG*]

- (2) Paragraph (1) does not apply to an agreement to which ■ CONC 4.7.2R (1) applies (overrunning).

- (3) A *firm* must consider sufficient information to enable it to make a reasonable *creditworthiness assessment* or a reasonable assessment required by (1).

[Note: paragraph 4.21 of ILG]

5.2.3

G The extent and scope of the *creditworthiness assessment* or the assessment required by ■ CONC 5.2.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

- (1) the type of *credit*;
- (2) the amount of the *credit*;
- (3) the cost of the *credit*;
- (4) the financial position of the *customer* at the time of seeking the *credit*;
- (5) the *customer's* credit history, including any indications that the *customer* is experiencing or has experienced financial difficulties;
- (6) the *customer's* existing financial commitments including any repayments due in respect of other *credit agreements*, *consumer hire agreements*, *regulated mortgage contracts*, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the *firm*;
- (7) any future financial commitments of the *customer*;
- (8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the *customer*;
- (9) the vulnerability of the *customer*, in particular where the *firm* understands the *customer* has some form of mental capacity limitation or reasonably suspects this to be so because the *customer* displays indications of some form of mental capacity limitation (see ■ CONC 2.10).

[Note: paragraph 4.10 of ILG]

Proportionality of assessments

5.2.4

G (1) To consider all of the factors set out in ■ CONC 5.2.3 G in all cases is likely to be disproportionate.

[Note: paragraph 4.11 of ILG]

- (2) A *firm* should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of the *credit* being sought and the potential risks to the *customer*. The risk of *credit* not being *sustainable* directly relates to the amount of *credit* granted and the *total charge for credit* relative to the *customer's* financial situation.

[Note: paragraph 4.11 and part of 4.16 of *ILG*]

- (3) A *firm* should consider the types and sources of information to use in its *creditworthiness assessment* and assessment required by ■ CONC 5.2.2R (1), which may, depending on the circumstances, include some or all of the following:
- (a) its record of previous dealings;
 - (b) evidence of income;
 - (c) evidence of expenditure;
 - (d) a credit score;
 - (e) a *credit reference agency* report; and
 - (f) information provided by the *customer*.

[Note: paragraph 4.12 of *ILG*]

- (3A) Where the *customer* is borrowing for the purposes of a business, it may be reasonable to have regard to the *customer's* business plan for the purposes of an assessment required by ■ CONC 5.2.1R or ■ CONC 5.2.2R, but the assessment should not be based solely on that business plan.
- (3B) Where there is more than one *customer* acting together as 'joint borrowers', the *lender* should consider whether it may be appropriate to assess each *customer* in accordance with ■ CONC 5.2.1R or ■ CONC 5.2.2R separately (as well as collectively), having regard to the risk to that *customer* arising from the *credit* being sought were the *customer* to be treated as being solely responsible for obligations of the joint borrowers under the agreement. (Where the *borrower* is a *partnership* or an unincorporated association, the members or *partners* may be treated as a single *customer*.)
- (4) A high level of scrutiny in the assessment required by ■ CONC 5.2.2R (1) would normally be expected before the *lender* enters into a *regulated credit agreement* secured by a second or subsequent charge on the *customer's* home.

[Note: paragraph 4.17 of *ILG*]

Creditworthiness assessment where there is a guarantor etc

5.2.5

R

- (1) This *rule* applies if, in relation to a *regulated credit agreement*:
- (a) an *individual* other than the *borrower* (in this *rule* referred to as "the guarantor") is to provide a guarantee or an indemnity (or both); and
 - (b) the *lender* is required to undertake an assessment of the *customer* under ■ CONC 5.2.1R or ■ CONC 5.2.2R.
- (2) Before entering into the *regulated credit agreement*, the *lender* must undertake an assessment of the potential for the guarantor's commitments in respect of the *regulated credit agreement* to adversely impact the guarantor's financial situation.

- (3) A *firm* must consider sufficient information to enable it to make a reasonable assessment under this *rule*, taking into account the information of which the *firm* is aware at the time the *regulated credit agreement* is to be made.
- (4) For the purposes of (2), ■ CONC 5.2.3G, ■ CONC 5.2.4G and ■ CONC 5.3.1G to ■ CONC 5.3.8G apply as if:
 - (a) references to the *customer* were references to the guarantor; and
 - (b) references to ■ CONC 5.2.2R(1) were references to ■ CONC 5.2.5R(2).
- (5) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

5.2.6

G

- (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) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under ■ CONC 5.2.5R, does not remove or reduce the obligation on the *lender* to carry out an assessment of the *borrower* under ■ CONC 5.2.1R or ■ CONC 5.2.2R. *Firms* are reminded of the *rule* in ■ CONC 5.3.4R that the assessment of the *borrower* must not be based primarily or solely on the value of any *security* provided by the *borrower*.

5.3 Conduct of business in relation to creditworthiness and affordability

Creditworthiness and sustainability

5.3.1

G

- (1) In making the *creditworthiness assessment* or the assessment required by ■ CONC 5.2.2R (1), a *firm* should take into account more than assessing the *customer's* ability to repay the *credit*.

[Note: paragraph 4.2 of ILG]

- (2) The *creditworthiness assessment* and the assessment required by ■ CONC 5.2.2R (1) should include the *firm* taking reasonable steps to assess the *customer's* ability to meet *repayments* under a *regulated credit agreement* in a *sustainable* manner without the *customer* incurring financial difficulties or experiencing significant adverse consequences.

[Note: paragraph 4.1 (box) and 4.2 of ILG]

- (3) A *firm* in making its *creditworthiness assessment* or the assessment required by ■ CONC 5.2.2R (1) may take into account future increases in income or future decreases in expenditure, where there is appropriate evidence of the change and the *repayments* are expected to be *sustainable* in the light of the change.

[Note: paragraph 4.9 of ILG]

- (4) If a *firm* takes income or expenditure into account in its *creditworthiness assessment* or its assessment required under ■ CONC 5.2.2R (1):
- the *firm* should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;
 - it is not generally sufficient for a *firm* to rely solely for its assessment of the *customer's* income and expenditure, on a statement of those matters made by the *customer*;
 - its assessment should be based on what the *firm* knows at the time of the assessment.

[Note: paragraph 4.13, 4.14 and 4.15 of ILG]

- (5) An example of where it may be reasonable to take into account expected future income would be, in the case of loans to fund the provision of further or higher education, provided that an appropriate assessment required by this chapter is carried out and there is an appropriate exercise of forbearance in respect of initial repayments, for example, deferring or limiting the obligation to repay until the *customer's* income has reached a specified level. Any assumptions regarding future income should be reasonable and capable of substantiation in the individual case and the products should be designed in a way to minimise the risks to the *customer*.

[Note: footnote 21 to paragraph 4.9 (box) of ILG]

- (6) For the purposes of CONC "sustainable" means the *repayments* under the *regulated credit agreement* can be made by the *customer*:
- (a) without undue difficulties, in particular:
 - (i) the *customer* should be able to make *repayments* on time, while meeting other reasonable commitments; and
 - (ii) without having to borrow to meet the *repayments*;
 - (b) over the life of the agreement, or for such an agreement which is an *open-end agreement*, within a reasonable period; and
 - (c) out of income and savings without having to realise security or assets; and

"unsustainable" has the opposite meaning.

[Note: paragraphs 4.3 and 4.4 of ILG]

- (7) For a *regulated credit agreement* which is an *open-end agreement* the *firm*, in making its *creditworthiness assessment* or the assessment required by ■ CONC 5.2.2R (1), should:
- (a) make a reasonable assessment of whether the *customer* is able to meet the *repayments* in a *sustainable* manner; and
 - (b) make the assessment based on reasonable assumptions about the likely duration of the *credit*.

[Note: paragraph 4.5 of ILG]

- (8) For a *regulated credit agreement* for *running-account credit* the *firm*, in making its *creditworthiness assessment* or the assessment required by ■ CONC 5.2.2R (1):
- (a) should consider the *customer's* ability to repay the maximum amount of *credit* available (equivalent to the *credit limit*) under the agreement within a reasonable period;
 - (b) may, in considering what is a reasonable period in which to repay the maximum amount of *credit* available, 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*; and
 - (c) should not use the assumption of the amount necessary to make only the minimum *repayment* each *month*.

[Note: paragraph 4.6 of ILG]

(9) For a *regulated credit agreement* for *running-account credit* the *firm* should set the *credit limit* based on the *creditworthiness assessment* or the assessment required by ■ CONC 5.2.2R (1) and taking into account the matters in ■ CONC 5.2.3 G, and, in particular, the information it has on the *customer's* current disposable income taking into account any reasonably foreseeable future changes.

[Note: paragraph 4.6 (box) of ILG]

(10) An example of a reasonably foreseeable future change in disposable income which a *firm* should take into account in setting a *credit limit* may include where a *customer* is known to be, or it is reasonably foreseeable that a *customer* is, close to retirement and faces a significant fall in disposable income.

[Note: paragraph 4.6 (box) of ILG]

(11) Where a *firm* requests information from a *customer* for its *creditworthiness assessment* or its assessment required by ■ CONC 5.2.2R (1) and the information provided by the *customer* is false and the *firm* has no reason to know this is the case, the *firm* should not contravene ■ CONC 5.2.1 R or ■ CONC 5.2.2 R.

[Note: paragraph 4.10 of ILG]

(12) Subject to the relevant legal constraints, *FCA* encourages the sharing between *lenders* of accurate data about the performance of a *customer's* account and the settlement of outstanding debts, as the process of making the assessments in this chapter is assisted by *lenders* registering such data with *credit reference agencies*, in a timely manner.

5.3.2 **R** A *firm* must establish and implement clear and effective policies and procedures to make a reasonable *creditworthiness assessment* or a reasonable assessment required by ■ CONC 5.2.2R (1).

[Note: paragraph 4.19 of ILG]

5.3.3 **G** Under the procedures required by ■ CONC 5.3.2 R a *firm* should take adequate steps, insofar as it is reasonable and practicable to do so, to ensure that information (including information supplied by the *customer*) on an application for *credit* relevant to a *creditworthiness assessment* or an assessment required by ■ CONC 5.2.2R (1) is complete and correct.

[Note: paragraph 4.29 of ILG]

Unfair business practices: lenders

5.3.4 **R** A *firm* must not base its *creditworthiness assessment*, or its assessment required under ■ CONC 5.2.2R (1), primarily or solely on the value of any *security* provided by the *customer*, but this *rule* does not apply in relation to a *regulated credit agreement* under which the *firm* takes an article in *pawn* and the *customer's* total financial liability (including capital, interest and all other charges) is limited under the agreement to the proceeds of sale which

would represent the true market value (within the meaning of section 121 of the CCA) of the article or articles *pawned* by the *customer*.

- 5.3.5 **R** A *firm* must not advise or encourage a *customer* to enter into a *regulated credit agreement* for an amount of *credit* higher than the *customer* initially requested if the *creditworthiness assessment* or the assessment required by ■ CONC 5.2.2R (1) indicates that repayment of the higher amount would not be *sustainable* or the *firm* ought reasonably to suspect that that is the case.

[Note: paragraph 4.28 of *ILG*]

- 5.3.6 **R** 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*, unless the *customer* is permitted to check the application before signing the agreement.

[Note: paragraph 4.30 of *ILG*]

- 5.3.7 **R** A *firm* must not accept an application for *credit* under a *regulated credit agreement* where the *firm* knows or ought reasonably to suspect that the *customer* has not been truthful in completing the application in relation to information supplied by the *customer* relevant to the *creditworthiness assessment* or the assessment required by ■ CONC 5.2.2R (1).

[Note: paragraph 4.31 of *ILG*]

- 5.3.8 **G** An example of where a *firm* ought reasonably to suspect that the *customer* has not been truthful may be that the information supplied by the *customer* concerning income or employment status is clearly inconsistent with other available information.

 5.4 Conduct of business: credit brokers**Application**

5.4.1 **R** This section applies to a *firm* with respect to *credit broking*.

Conduct of business

5.4.2 **R** (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*]

5.4.3 **R** 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

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 5.5: see ■ CONC TP 4.2]

Application

5.5.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a prospective *borrower* under a *P2P agreement*.

5.5.2 **G**

- (1) This section contains *rules* that apply to the *person* operating the electronic system that facilitates *persons* becoming *lenders* and *borrowers* under *P2P agreements*, in contrast to ■ CONC 5.2 which applies to the *lender*.
- (2) A *P2P agreement* may also be a *credit agreement* or a *regulated credit agreement* in which case applicable provisions of the CCA or CONC will apply to such agreements. The extent to which CCA provisions apply to a *lender* will depend largely on whether the *lender* makes the *credit agreement* in the course of carrying on a business.

Creditworthiness assessment

5.5.3 **R**

- (1) Before a *P2P agreement* is made, a *firm* must undertake an assessment of the creditworthiness of the prospective *borrower*.
- (2) A *firm* carrying out the assessment in (1) must consider:
 - (a) the potential for the commitments under the *P2P agreement* to adversely impact the prospective *borrower's* financial situation, taking into account the information of which the *firm* is aware at the time the *P2P agreement* is to be made; and
 - (b) the ability of the prospective *borrower* to make *repayments* as they fall due over the life of the *P2P agreement*, or for such an agreement which is an *open-end agreement*, to make *repayments* within a reasonable period.
- (3) A creditworthiness assessment must be based on sufficient information obtained from:
 - (a) a prospective *borrower*, where appropriate; and
 - (b) a *credit reference agency*, where necessary.

(4) This *rule* does not apply to an agreement under which a *person* takes an article in *pawn*.

5.5.4 **R** Where ■ CONC 5.5.3 R applies to a *firm*, the *firm* must comply with ■ CONC 5.3.2 R, ■ CONC 5.3.4 R, ■ CONC 5.3.5 R, ■ CONC 5.3.6 R and ■ CONC 5.3.7 R to the same extent as if it were the *lender* under an agreement to which those *rules* apply and should take into account the *guidance* in ■ CONC 5.3 to the same extent, and should also take into account ■ CONC 5.2.3 G and ■ CONC 5.2.4 G treating them as guidance on ■ CONC 5.5.3 R.

5.5.5 **R** A *firm* must consider sufficient information to enable it to make a reasonable assessment required by ■ CONC 5.5.3 R.

[Note: paragraph 4.21 of *ILG*]

5.5.6 **R** Before a *P2P agreement* is entered into under which a *person* takes an article in *pawn*, the *firm* must:

- (1) undertake the assessment referred to in ■ CONC 5.2.2R (1) of the prospective *borrower*; and
- (2) comply with ■ CONC 5.3.2 R, ■ CONC 5.3.4 R, ■ CONC 5.3.5 R, ■ CONC 5.3.6 R and ■ CONC 5.3.7 R to the same extent as if it were the *lender* under an agreement to which those *rules* apply, and should also take into account the *guidance* in ■ CONC 5.2.3 G and ■ CONC 5.2.4 G and ■ CONC 5.3 to the same extent.

Creditworthiness assessment where there is a guarantor etc

5.5.7 **R**

- (1) This *rule* applies if, in relation to a *P2P agreement*:
 - (a) the prospective *borrower* is an *individual*;
 - (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); and
 - (c) the *firm* is required to undertake an assessment of the prospective *borrower* under ■ CONC 5.5.3R.
- (2) Before the *P2P agreement* is made, the *firm* must undertake an assessment of the potential for the guarantor's commitments in respect of the *P2P agreement* to adversely impact the guarantor's financial situation.
- (3) A *firm* must consider sufficient information to enable it to make a reasonable assessment under this *rule*, taking into account the information of which the *firm* is aware at the time the *P2P agreement* is to be made.
- (4) For the purposes of (2), ■ CONC 5.2.3G, ■ CONC 5.2.4G and ■ CONC 5.3.1G to ■ CONC 5.3.8G apply as if:
 - (a) references to the *customer* were references to the guarantor;
 - (b) references to ■ CONC 5.2.2R(1) were references to ■ CONC 5.5.7R(2); and

5.5.8

G

- (c) references to the *regulated credit agreement* were references to the *P2P agreement*.
- (5) 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) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under ■ CONC 5.5.7R, does not remove or reduce the obligation on the *firm* to carry out an assessment of the *borrower* under ■ CONC 5.5.3R. *Firms* are reminded of the rule in ■ CONC 5.3.4R that the assessment of the *borrower* must not be based primarily or solely on the value of any *security* provided by the *borrower*.

