

Chapter 5A

Cost cap for high-cost short-term credit



5A.3 Prohibition from imposing charges under agreements for high-cost short-term credit

Application

- 5A.3.1 R** This section applies to:
- (1) a *firm* with respect to *consumer credit lending*;
 - (2) a *firm* with respect to *debt administration*;
 - (3) a *firm* with respect to *debt collecting*; or
 - (4) a *firm* with respect to *operating an electronic system in relation to lending*.

Cost caps: imposition of charges etc.: Total cost cap

- 5A.3.2 R** A *firm* must not:
- (1) impose one or more charges, on a borrower under an agreement for *high-cost short-term credit*, that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding the amount of *credit* provided under the agreement;
 - (2) arrange for or instruct another *person* to take the step described in (1).

Cost caps: imposition of charges etc.: Initial cost cap

- 5A.3.3 R** A *firm* must not impose one or more charges, on a borrower under an agreement for *high-cost short-term credit*, that, alone or in combination with any other charge under the agreement or a connected agreement, exceed or are capable of exceeding 0.8% of the amount of *credit* provided under the agreement calculated per *day* from the date on which the borrower draws down the *credit* until the date on which repayment of the *credit* is due under the agreement, but if the date of repayment is postponed by an indulgence or waiver, the date to which it is postponed.

- 5A.3.4 R** A reference to a charge in ■ CONC 5A.3.3 R (Initial cost cap) excludes a charge to which ■ CONC 5A.3.18 R (Default cap) applies.

- 5A.3.5** **G** (1) The initial cost cap is calculated on a daily basis. However, a charge or charges that may be imposed in compliance with this cap can amount to 0.8% of the *credit* provided (determined in accordance with **■ CONC 5A.3.7 R**) multiplied by the number of days from the date on which the borrower draws down the *credit* until the date indicated in **■ CONC 5A.3.3 R**.
- (2) Where *credit* is drawn down in tranches or is repaid in instalments, the calculation of the initial cost cap takes into account the different amounts of *credit* outstanding and the different durations for which the *credit* is provided.

Determining the amount of credit provided

- 5A.3.6** **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■ CONC 5A.3.2 R** (Total cost cap) is the lesser of:
- (1) the amount of *credit* that the *lender* actually advances under the agreement; or
- (2) the *credit limit*.

- 5A.3.7** **R** The amount of *credit* provided under an agreement for *high-cost short-term credit* for the purposes of **■ CONC 5A.3.3 R** (Initial cost cap) is the amount of *credit* outstanding on the *day* in question under the agreement, disregarding for the purposes of that *rule* the effect of the borrower discharging all or part of the borrower's indebtedness in accordance with section 94 of the CCA (right to complete payments ahead of time) by repayment of *credit* before the date provided for in the agreement.

- 5A.3.8** **G** For the purpose of the calculation of the initial cost cap, if there is an early repayment by the borrower of an amount of *credit* repayable under an agreement for *high-cost short-term credit* (including where that early repayment is financed by a replacement agreement), the amount of *credit* outstanding on the *days* that follow the early repayment is not reduced to reflect the amount of the early repayment. There is no effect, however, on the right of a borrower to any rebate applicable under the Consumer Credit (Early Settlement) Regulations 2004 and, where applicable, a borrower therefore continues to be entitled to a rebate.

- 5A.3.9** **G** For the purposes of this chapter, where a *lender* allows a borrower to make a number of drawdowns of *credit* (which may be expressed to be possible up to a specified amount of *credit*) but only with the *lender's* consent to each respective drawdown, each drawdown is a separate agreement for *high-cost short-term credit* and each agreement needs to be documented as a separate *regulated credit agreement* in accordance with the CCA and with the rest of *CONC*. This chapter applies to each drawdown as a separate agreement accordingly.

Refinancing

- 5A.3.10** **R** A *firm* must not impose one or more charges by way of an agreement that varies or supplements an earlier agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower taken

together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.3.6 R) under the combined effect of the varying or supplemental agreement and the earlier agreement.

5A.3.11 **R** A *firm* must not impose one or more charges by exercising a contractual power to vary or supplement an agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower taken together with such charges imposed under the agreement or in a connected agreement to that agreement, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.3.6 R) under the agreement as varied or supplemented.

5A.3.12 **R** A *firm* must not impose one or more charges in connection with a breach of the agreement by the borrower by way of an agreement that varies or supplements an earlier agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower, taken together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.13 **R** A *firm* must not impose one or more charges in connection with a breach of the agreement by the borrower by exercising a contractual power to vary or supplement an agreement for *high-cost short-term credit* if the amount of the charge or charges payable by the borrower, taken together with such charges imposed under the agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.14 **R** A *firm* must not impose one or more charges under an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the charge or charges under the replacement agreement, taken together with the charges under the earlier agreement or a connected agreement to any of those agreements, exceed or are capable of exceeding the amount of *credit* provided (determined in accordance with ■ CONC 5A.3.6 R) under the combined effect of the replacement agreement and the earlier agreement.

5A.3.15 **R** A *firm* must not impose one or more charges in connection with a breach of the agreement by the borrower under an agreement for *high-cost short-term credit* that replaces an earlier agreement for *high-cost short-term credit* if the charge or charges under the replacement agreement payable by the borrower, taken together with such charges imposed under the earlier agreement or in a connected agreement to any of those agreements, exceed or are capable of exceeding £15.

5A.3.16 **R** If the effect of a replacement agreement is to repay an amount outstanding under an earlier agreement for *high-cost short-term credit* before the date on which the earlier agreement requires repayment, any charge imposed under the earlier agreement which never becomes payable as a result of the early settlement is disregarded for the purposes of ■ CONC 5A.3.14 R.

5A.3.17 **R** A *firm* must not count any amount provided to the borrower to repay any amount of *credit* outstanding under an earlier agreement for *high-cost short-term credit* or any amount provided to pay any charge outstanding under the earlier agreement:

- (1) in calculating the amount of *credit* provided for the purposes of ■ CONC 5A.3.10 R, ■ CONC 5A.3.11 R or ■ CONC 5A.3.14 R; or
- (2) where the *firm* replaces an earlier agreement for *high-cost short-term credit*, in calculating the amount of *credit* provided for the purposes of ■ CONC 5A.3.3 R (Initial cost cap).

Default cap

5A.3.18 **R** A *firm* must not impose, on a borrower under an agreement for *high-cost short-term credit*:

- (1) one or more charges payable by the borrower in connection with a breach of the agreement by the borrower, which charges alone or in combination (and whether in relation to one breach or in combination relate to multiple breaches of the agreement) exceed or are capable of exceeding £15;
- (2) a charge by way of interest on a charge of a type in (1) that exceeds or is capable of exceeding 0.8% of the amount of the charge calculated per *day* from the date the charge is payable until the date the charge is paid;
- (3) one or more charges (except for a charge to which (1) or (2) applies), on any amount of *credit* provided which in breach of the agreement has not been repaid, that alone or in combination, exceed or are capable of exceeding 0.8% of that amount calculated per *day* from the date of the breach until that amount has been repaid.

5A.3.19 **G** *Firms* are also reminded of the provisions of section 93 of the CCA (Interest not to be increased on default).

Connected agreements and guidance on charges before assignment

5A.3.20 **R** Where a borrower or a prospective borrower pays a charge:

- (1) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which is in the same *group* as the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*; or
- (2) to a *firm*, that carries on or has carried on *credit broking* in relation to an agreement or prospective agreement for *high-cost short-term credit*, which shares some or all of that charge with the *firm* which is to provide, provides or has provided *credit* under the agreement for *high-cost short-term credit*;

the reference to a charge in ■ CONC 5A.3.2 R (Total cost cap) and ■ CONC 5A.3.3 R (Initial cost cap) includes this charge and the agreement providing for the charge is a connected agreement.

5A.3.21 **R** Where a *person* imposes on a borrower or a prospective borrower, under an agreement for *high-cost short-term credit*, a charge for an ancillary service to the agreement, the reference to a charge in ■ CONC 5A.3.2 R (Total cost cap), ■ CONC 5A.3.3 R (Initial cost cap) and ■ CONC 5A.3.18 R (Default cap) includes this charge and, if the charge is not provided for under the agreement for *high-cost short-term credit*, the agreement providing for the charge is a connected agreement.

5A.3.22 **G** Examples of the types of ancillary service to an agreement for *high-cost short-term credit* referred to in ■ CONC 5A.3.21 R include, but are not limited to, services related to processing the application and to the transmission of the money being lent, and insurance or insurance-like services ancillary to the agreement.

5A.3.23 **G** Where an agreement passes to another *firm* by assignment or by operation of law, any charges imposed in connection with the provision of *credit* under the agreement for *high-cost short-term credit* before the agreement passed to the *firm* are included within the charges referred to in ■ CONC 5A.3.

Prohibition on compound interest.....

5A.3.24 **R** A *firm* must not impose a charge under an agreement for *high-cost short-term credit*, which provides for a charge by way of interest, unless the *charge* is by way of simple interest.