

Chapter 5C

Overdraft pricing

5C.3 Interest rates for unarranged overdrafts to be no more than the interest rates for arranged overdrafts

5C.3.1

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- (1) A *firm* must not:
- (a) enter into an agreement with a *customer* that provides for payment by the *customer* of an unarranged overdraft charge; or
 - (b) impose on a *customer*, who enters into an unarranged overdraft, an unarranged overdraft charge,
- unless the charge satisfies the conditions in (2) or (3) (as applicable).
- (2) (a) This sub-paragraph applies where:
- (i) the *customer* concerned has an arranged overdraft in connection with the personal current account; and
 - (ii) interest can become payable on some or all of the balance of that arranged overdraft.
- (b) The rate of interest that applies to the unarranged overdraft must not exceed the rate of interest referred to in (a)(ii) that applies to the arranged overdraft.
- (a) This sub-paragraph applies where (2)(a) does not apply.
- (b) The *firm* must take reasonable steps to identify the type of personal current account provided by it (referred to in this sub-paragraph as the "comparable account"):
- (i) that bears closest resemblance to the personal current account held by the *customer*;
 - (ii) in connection with which an arranged overdraft can arise:
 - (ii) of an amount equivalent to the amount of the unarranged overdraft; and
 - (ii) that can attract the payment of interest; and
 - (iii) that has been made available to a significant number of its *customers*.
- (c) The rate of interest that applies to the unarranged overdraft must not exceed the relevant rate of interest identified in (d).
- (d) The relevant rate of interest for the purposes of (c) is:

- (i) where there is only one rate of interest that applies to arranged overdrafts connected to the comparable account, that rate; or
- (ii) where there are two or more rates of interest that apply to arranged overdrafts connected to the comparable account, the highest of those rates that is imposed on a not insignificant number of the *customers* to whom the account has been made available.

5C.3.2

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If a *firm* imposes an unarranged overdraft charge in contravention of ■ CONC 5C.3.1R(1)(b), the obligation to pay the charge is unenforceable against the *customer* and the *customer* is entitled to recover any sum paid by, or on behalf of, the *customer* under the obligation imposed.

5C.3.3

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- (1) The purpose of ■ CONC 5C.3.1R is to forbid *firms* from charging a *customer* who borrows a particular amount using an unarranged overdraft facility more than they would have had to pay (disregarding any fee-free amount) if they had borrowed an equivalent amount using their arranged overdraft facility (or, if they do not have an arranged overdraft facility, the highest amount that would have been payable (disregarding any fee-free amount) by a not insignificant number of other *customers* if they had borrowed an equivalent amount under an arranged overdraft facility connected with a comparable personal current account).
- (2) In ■ CONC 5C.3.1R(1)(b), ■ CONC 5C.3.1R(3)(d)(ii) and ■ CONC 5C.3.2R, “impose” an unarranged overdraft charge includes creating the contractual right to receive it, and relying on, or enforcing, the contractual right or purporting to do so (“imposes” and “imposed” should be read accordingly).
- (3) ■ CONC 5C.3.1R does not affect an unarranged overdraft charge, liability for which accrued before the date on which ■ CONC 5C.3.1R came into force. ■ CONC 5C.3.1R does affect, however, an unarranged overdraft charge liability for which accrued on or after the date on which ■ CONC 5C.3.1R came into force, irrespective of whether the agreement was made before or after the date on which ■ CONC 5C.3.1R came into force.
- (4) A *firm* is not prevented by ■ CONC 5C.3.1R from charging a *customer* who borrows using an unarranged overdraft less than it charges the *customer* for using an arranged overdraft facility or from not charging for such borrowing.
- (5) The *rules* in ■ CONC 5C.3.1R (other than ■ CONC 5C.3.1R(1)(a)) and ■ CONC 5C.3.2R are made pursuant to section 137C of the *Act*.