Chapter 6

Post contractual requirements
6.1 Application

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

6.1.2 G (1) CONC 6.5 and CONC 6.7 apply to firms with respect to consumer credit lending.

(2) CONC 6.3 applies to current account agreements that would be regulated credit agreements if the customer overdraws on the account.

(3) CONC 6.4 and CONC 6.6 apply to firms which carry on consumer credit lending in relation to regulated credit agreements and firms which carry on consumer hiring in relation to regulated consumer hire agreements.

(4) CONC 6.7.17 R to CONC 6.7.26 R also apply to firms with respect to operating an electronic system in relation to lending in relation to a borrower in relation to a P2P agreement.

(5) CONC 6.8 applies to credit broking.
Section 6.2: Assessment of creditworthiness: during agreement [deleted]
6.3 Information to be provided on a current account agreement and on significant overdrawing

Application

6.3.1 This section applies:

(1) to a firm with respect to consumer credit lending; and

(2) where a firm has entered into a current account agreement where:

(a) there is a possibility that the account-holder may be allowed to overdraft on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and

(b) if the account-holder did so, this would be a regulated credit agreement.

6.3.2 ■ CONC 6.3.3 R does not apply where the overdraft or excess would be secured on land.

Current account information

6.3.3 A firm must provide to the account-holder, in writing, the information in ■ CONC 4.7.2R (2) at least annually.

[Note: section 74A of CCA (partial implementation of article 18 of the Consumer Credit Directive)]

Information to be provided on significant overdrawing without prior arrangement

6.3.4 (1) A firm must inform the account-holder in writing of the matters in (2) without delay where:

(a) the account-holder overdrafts on the current account without a pre-arranged overdraft, or exceeds a pre-arranged overdraft limit, for a period exceeding one month;

(b) the amount of that overdraft or excess is significant throughout that period;

(c) the overdraft or excess is a regulated credit agreement; and

(d) the account-holder has not been informed in writing of the matters in (2) within that period.
(2) The matters in (1) are:
   (a) the fact that the account is overdrawn or the overdraft limit has been exceeded;
   (b) the amount of that overdraft or excess;
   (c) the rate of interest charged on it; and
   (d) any other charges payable by the customer in relation to it (including any penalties and any interest on those charges).

(3) For the purposes of (1)(b) the amount of the overdraft or excess is significant if:
   (a) the account-holder is liable to pay a charge for which he would not otherwise be liable; or
   (b) the overdraft or excess is likely to have an adverse effect on the customer’s ability to receive further credit (including any effect on the information about the customer held by a credit reference agency); or
   (c) it otherwise appears significant, having regard to all the circumstances.

(4) Where the overdraft or excess is secured on land, (1)(a) is to be read as if the reference to one month were a reference to three months.

[Note: section 74B of CCA]
[Note: article 18 of the Consumer Credit Directive]
6.4 Appropriation of payments

**Application**
This section applies to

1. a **firm** with respect to consumer credit lending;
2. a **firm** with respect to consumer hiring.

**Appropriation**

1. Where a **firm** is entitled to payments from the same **customer** in respect of two or more **regulated agreements**, the **firm** must allow the **customer**, on making any payment in respect of those agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum paid by him:
   
   a) in or towards the satisfaction of the sum due under any one of the agreements; or
   
   b) in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as the **customer** thinks fit.

   [Note: section 81(1) of CCA]

2. If the **customer** fails to make any such appropriation where one or more of the agreements is:
   
   a) a **hire-purchase agreement** or **conditional sale agreement**; or
   
   b) a **consumer hire agreement**; or
   
   c) an agreement in relation to which any **security** is provided; the **firm** must appropriate the payment towards satisfaction of the sums due under the agreements in the proportions which those sums bear to one another.

   [Note: section 81(2) of CCA]
6.5 Assignment of rights

Application

6.5.1 This section applies to a firm with respect to consumer credit lending.

Notice of assignment

6.5.2 (1) Where rights of a lender under a regulated credit agreement are assigned to a firm, that firm must arrange for notice of the assignment to be given to the customer:

(a) as soon as reasonably possible; or

(b) if, after the assignment, the arrangements for servicing the credit under the agreement do not change as far as the customer is concerned, on or before the first occasion they do.

[Note: section 82A of CCA]

(2) Paragraph (1) does not apply to an agreement secured on land.

(3) A firm may assign the rights of a lender under a regulated credit agreement to a third party only if:

(a) the third party is a firm; or

(b) where the third party does not require authorisation, the firm has an agreement with the third party which requires the third party to arrange for a notice of assignment in accordance with (1).

[Note: article 17 of the Consumer Credit Directive]
6.6 Pawn broking: conduct of business

Application

6.6.1 This section applies to:

(1) a firm with respect to consumer credit lending;

(2) a firm with respect to consumer hiring.

Failure to supply copies of pledge agreement etc

6.6.2 Sections 62 to 64 and 114(1) of the CCA continue to apply to a regulated agreement under which a person takes any article in pawn. A firm which fails to observe its obligations under those provisions may be subject to disciplinary action by the FCA.

[Note: section 115 of CCA]

Pawn records: relating to articles under a regulated credit agreement

6.6.3 A firm which takes any article in pawn under a regulated credit agreement must keep such books or other records as are sufficient to show and explain readily at any time all dealings with the article, including:

(1) the taking of the article in pawn;

(2) any redemption of the article; and

(3) where the article has become realisable by the firm, any sale of the article under section 121(1) of the CCA.

[Note: regulation 2(1) of SI 1983/1565]

6.6.4 Without prejudice to the generality of 6.6.3, the entries in the books or other records in respect of the dealings mentioned in 6.6.3 must contain the information in 6.6.7 to 6.6.9.

[Note: regulation 2(2) of SI 1983/1565]
Where the entries in relation to any article taken in pawn are not shown together as a whole but are shown in separate places, then in each place where entries are made the record must show:

1. the date and the number or other reference of the agreement under which the article was taken in pawn and, where separate from any document embodying the agreement, the number or other reference of the pawn-receipt;

2. the date on which the article was taken in pawn; and

3. the name of the customer.

[Note: regulation 2(3) of SI 1983/1565]

A firm must retain the books or other records required at least until the expiration of whichever is the longer of the following periods:

1. five years from the date on which the article was taken in pawn; or

2. where an article has become realisable by the firm, three years from the date of sale under section 121(1) of the CCA or the redemption of the article, as the case may be.

[Note: regulation 2(4) of SI 1983/1565]

Information to be kept by a person who takes any article in pawn

The entries in the books or other records, in relation to the taking of the article in pawn, must contain the following information:

1. the date and the number or other reference of the agreement under which the article was taken in pawn, and of the pawn-receipt if separate, sufficient to identify it or them;

2. the date on which the article was taken in pawn;

3. the name and a postal address and, where appropriate, other address of the customer;

4. the description that appears in the pawn-receipt of the article taken in pawn;

5. the amount of the credit secured by the pledge;

6. the date of the end of the redemption period; and

7. the rate of interest, and the amount or rate of any other charges for credit, as provided for in the agreement under which the article was taken in pawn.

[Note: paragraph 1 of Schedule to SI 1983/1565]
The entries in the books or other records in relation to any redemption of the article must contain the date of the redemption.

[Note: paragraph 2 of Schedule to SI 1983/1565]

The entries in the books or other records, where the article has become realisable by the firm, in relation to any sale of the article under section 121(1) of the CCA, must contain the following information:

1. the date of the sale;
2. where the article was sold by auction, the name and a postal address of the auctioneer;
3. where the article was not sold by auction, the postal address of the premises at which the sale took place;
4. the gross amount realised;
5. the itemised expenses, if any, of the sale;
6. where (5) applies, the net proceeds of sale, being the difference between the gross amount in (4) and the total amount of the expenses in (5);
7. the amount which would have been payable under the agreement under which the article was taken in pawn if the article had been redeemed on the date of the sale;
8. where the net proceeds of sale are not less than the sum which, if the article taken in pawn had been redeemed on the date of the sale, would have been payable for its redemption, the amount of any surplus payable to the customer;
9. where (8) does not apply, the amount by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the article taken in pawn on the date of the sale, being the amount for which the customer remains liable under section 121(4) of the CCA;
10. the date on which any surplus in (8) was paid to the customer;
11. the date on which any amount in (9) for which the customer remained liable under section 121(4) of the CCA was received from the customer.

[Note: paragraph 3 to Schedule to SI 1983/1565]
6.7 Post contract: business practices

Application

6.7.1

(1) This section applies to a firm with respect to consumer credit lending.

(2) CONC 6.7.17 R to CONC 6.7.26 R also apply to a firm with respect to operating an electronic system in relation to lending in relation to a borrower under a P2P agreement and references in those provisions to a firm refinancing an agreement refer to any action taken by an operator of an electronic system in relation to lending which has the result that a P2P agreement is refinanced.

(3) CONC 6.7.3AR to CONC 6.7.3DG and CONC 6.7.27R to CONC 6.7.40G do not apply in relation to a credit card of a type that the firm promotes to customers solely for the purposes in each case of the customer’s business (a “business credit card”).

(4) CONC 6.7.2R to CONC 6.7.3G do not apply to retail revolving credit.

(5) CONC 6.7.3AR and CONC 6.7.3BG do not apply to the extent that the firm follows the guidance entitled Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance, except where the guidance indicates that the firm should act in accordance with CONC 6.7.3AR.

Business practices

6.7.2

(1) A firm must monitor a customer’s repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

(2) This rule does not apply in relation to a credit card unless the card is a business credit card (see CONC 6.7.1R(3)).

[Note: paragraph 6.2 of ILG]

6.7.3

The action referred to in CONC 6.7.2 R should generally include:

(1) notifying the customer of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and

[Note: paragraph 6.16 of ILG]
(2) providing contact details for not-for-profit debt advice bodies.

[Note: paragraph 6.2 (box) of ILG]

Business practices: credit cards and retail revolving credit

A firm must monitor a retail revolving credit customer’s or a credit card customer’s repayment record and any other relevant information held by the firm and take appropriate action where there are signs of actual or possible financial difficulties.

(1) Circumstances in which there are signs of actual or possible financial difficulties include where there is a significant risk of one or more of the matters set out in CONC 1.3.1G(1) to (7) (Guidance on financial difficulties) occurring in relation to the retail revolving credit customer or credit card customer.

(2) Examples of appropriate action as referred to in CONC 6.7.3AR would include the firm doing one or more of the following, as may be relevant in the circumstances:

(a) considering suspending, reducing, waiving or cancelling any further interest, fees or charges (for example, when a customer provides evidence of financial difficulties and is likely to be unable to meet payments as they fall due or is only able to make token payments, where in either case the level of debt would continue to rise if interest, fees and charges continue to be applied);

(b) accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer’s existing debts would mean not being able to meet the customer’s priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills);

(c) notifying the customer of the risk of escalating debt, additional interest, fees or charges and of potential financial difficulties; and

(d) providing contact details for not-for-profit debt advice bodies and encouraging the customer to contact one of them.

(3) A customer paying the minimum amount required under the agreement is not, by itself, a sign of possible or actual financial difficulties under CONC 6.7.3AR. It may, however, be such a sign where, for example, a customer with a pattern of paying more than the minimum required payment reduces the payments to the minimum required payment due, but their pattern of drawing down credit on the card does not materially change.

(4) In determining what is “appropriate action” under CONC 6.7.3AR, a firm should take into account any steps it has taken under CONC 6.7.30R, CONC 6.7.31R or CONC 6.7.37R.
A firm must establish, implement and maintain an adequate policy for identifying and dealing with customers showing signs of actual or possible financial difficulties, even though they may have not missed a payment.

The policy referred to in CONC 6.7.3CR is in addition to the policy required under CONC 7.2.1R.

Credit card and retail revolving credit requirements

A firm must first allocate a repayment to the debt subject to the highest rate of interest (and then to the next highest rate of interest and so on) for:

1. the outstanding balance on a credit card; or
2. the outstanding balance on a store card; or
3. a credit card or a store card, in relation to which there is a fixed-sum credit element, to repayments beyond those required to satisfy the fixed instalments.

[Note: paragraph 6.3 of ILG]

Subject to (4), a firm must set the minimum required repayment under a regulated credit agreement for a credit card or a store card at an amount equal to at least that amount which repays the interest, fees and charges that have been applied to the customer’s account, plus one percentage of the amount outstanding.

[Note: paragraph 6.4 of ILG]

Where (1) applies and a firm applies interest to a period of more than one month, for the purpose of calculating the amount of the interest part of the minimum required repayment the firm may disregard any interest applied in respect of a period prior to the period of the statement in question.

[Note: paragraph 6.4 (box) of ILG]

Paragraph (1) applies to agreements made on or after 1 April 2011.

Paragraph (1) does not apply in circumstances where the firm, in order to allow the customer to defer (in whole or part) the making of repayments under the regulated credit agreement if they choose to do so in the circumstances and for the duration set out in the guidance entitled Credit cards (including retail revolving credit) and coronavirus: temporary guidance for firms, the guidance entitled Credit cards (including retail revolving credit) and coronavirus: updated temporary guidance for firms or the guidance entitled Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance, varies or has varied the regulated credit agreement so as not to oblige the customer to make minimum required repayments for that duration.
A firm under a regulated credit agreement for a credit card or a store card must provide a customer with the option to pay any amount they choose (equal to or more than the minimum required repayment but less than the full outstanding balance) on a regular basis, when making automated repayments.

[Note: paragraph 6.5 of ILG]

A firm must not increase, nor offer to increase, a customer’s credit limit on a credit card or retail revolving credit agreement where:

(1) the firm has been advised that the customer does not wish to have any credit limit increases; or

(2) a customer is at risk of financial difficulties.

[Note: paragraphs 6.6 and 6.7 of ILG]

A firm under a retail revolving credit agreement, or a regulated credit agreement for a credit card, must:

(1) permit a customer at any time to reduce or decline offers to increase the credit limit; and

(2) permit a customer to decline to receive offers of credit limit increases.

[Note: paragraphs 6.8 and 6.9 of ILG]

(1) This rule applies to a regulated credit agreement for a credit card and to a retail revolving credit agreement.

(2) A firm must notify the customer of a proposed increase in the credit limit under the agreement:

(a) in the case of a regulated credit agreement for a credit card or a store card, at least 30 days before the increase comes into effect; and

(b) in the case of a retail revolving credit agreement (other than an agreement for a store card), at least 28 days before the increase comes into effect, except in the circumstances described in (3).

(3) The notification in (2) is not required where:

(a) the increase is at the express request of the customer; or

(b) the increase is proposed by the firm, but the customer agrees to it at that time and wishes it to come into effect in less than 30 days or 28 days (as the case may be).

[Note: paragraph 6.17 of ILG]

Where a customer is at risk of financial difficulties, a firm under a retail revolving credit agreement or a regulated credit agreement for a credit card
must, other than where a promotional rate of interest ends, not increase the rate of interest under the agreement.

[Note: paragraph 6.10 of ILG]

6.7.11 For the purposes of CONC 6.7.7 R and CONC 6.7.10 R a customer is at risk of financial difficulties if the customer:

(1) is two or more payments in arrears; or

(2) has agreed a repayment plan with the firm in question; or

(3) is in serious discussion with a firm which carries on debt counselling with a view to entering into a debt management plan and the firm has been notified of this fact.

[Note: paragraph 6.10 (box) of ILG]

6.7.12 [deleted]

6.7.13 Where a firm proposes to exercise a power under a regulated credit agreement for a credit card or store card to increase the interest rate, the firm must:

(1) permit the customer sixty days, from the date of the firm's notice of the proposed increase during which period the customer may give notice to the firm requiring it to close the account;

(2) permit the customer to pay off the outstanding balance at the rate of interest before the proposed increase and over a reasonable period; and

(3) give notice to the customer of the rights in (1) and (2).

[Note: paragraphs 6.11 and 6.19 of ILG]

**Interest rate variations**

6.7.14 Where a firm has a right to increase the interest rate under a regulated credit agreement, the firm must not increase the interest rate unless there is a valid reason for doing so.

[Note: paragraph 6.20 of ILG]

6.7.15 Examples of valid reasons for increasing the rate of interest in CONC 6.7.14 R include:

(1) recovering the genuine increased costs of funding the provision of credit under the agreement; and

(2) a change in the risk presented by the customer which justifies the change in the interest rate, which would not generally include
missing a single *repayment* or failing to repay in full on one or two occasions

[Note: paragraph 6.20 (box) of ILG]

6.7.16 Where a *firm* increases a rate of interest based on a change in the risk presented by the *customer*, the *firm* must:

(1) notify the *customer* that the rate of interest has been increased based on a change in risk presented by the *customer*; and

(2) if requested by the *customer* provide a suitable explanation which may be a generic explanation for such increases.

[Note: paragraph 6.20 (box) of ILG]

“Buy now pay later” or similar offers

6.7.16A (1) This rule applies only to retail revolving credit and BNPL agreements to which Part 6 of the Payment Services Regulations does not apply.

(2) Where a *customer* has the benefit of a zero-percentage or low interest, introductory or promotional offer that depends on the *customer* meeting certain conditions, a *firm* must provide notice to the *customer* reminding them of any action they need to take to meet the conditions of the offer and the date by which this action must be taken, within a reasonable period before that date, taking account of the time at which the information may be most useful to the *customer*.

This notice must be provided in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*), in plain language and sufficiently prominent, so that it is likely to be seen and understood by the *customer*.

Partial repayments under “Buy now pay later” or similar offers

6.7.16B (1) This rule applies where:

(a) BNPL credit has been advanced to a *customer* under a BNPL agreement; and

(b) the *customer* makes a repayment:

(i) of part of the BNPL credit;

(ii) on or before the date provided for in the BNPL payment condition that applies to that BNPL credit.

(2) The BNPL agreement must have the effect that, in respect of so much of the BNPL credit as has been repaid, the *customer* is liable to pay no more than the *customer* would have been liable to pay if the BNPL credit had been repaid in full on or before the date provided for in the BNPL payment condition.
Rules on refinancing: general

6.7.17 R

(1) In CONC 6.7.18 R to CONC 6.7.23 R “refinance” means to extend, or purport to extend, the period over which one or more repayment is to be made by a customer whether by:

(a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement;

(b) exercising a contractual power contained in an existing regulated credit agreement; or

(c) other means, for example, granting an indulgence or waiver to the customer.

(2) “Exercise forbearance” means to refinance a regulated credit agreement where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:

(a) there is no charge in connection with the refinancing; or

(b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.

(3) The term “refinance” within paragraph (1) does not include where under a regulated credit agreement repayable in instalments a customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.

(4) For the purpose of CONC 6.7.18 R, CONC 6.7.19 R, CONC 6.7.21 G and CONC 6.7.23 R, the term “refinance” within paragraph (1) does not include where a firm extends, or purports to extend, the period over which one or more repayment is to be made by a customer in circumstances where the firm does this in order to follow the guidance entitled Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance, the guidance entitled Personal loans and coronavirus: Payment Deferral Guidance, the guidance entitled Motor finance agreements and coronavirus: Payment Deferral Guidance, the guidance entitled High-cost short-term credit and coronavirus: Payment Deferral Guidance, the guidance entitled Rent-to-own, buy-now-pay-later and pawnbroking agreements and coronavirus: Payment Deferral Guidance or the guidance entitled Coronavirus and customers in temporary financial difficulty: updated guidance for insurance and premium finance firms.

6.7.18 R

A firm must not encourage a customer to refinance a regulated credit agreement if the result would be the customer’s commitments are not sustainable.

[Note: paragraph 4.27 of ILG]

6.7.19 R

A firm must not refinance a customer’s existing credit with the firm (other than by exercising forbearance), unless:

(1) the firm does so at the customer’s request or with the customer’s consent; and
(2) the firm reasonably believes that it is not against the customer’s best interests to do so.

[Note: paragraph 6.24 of ILG]

Rules on refinancing: high-cost short-term credit

Before a firm agrees to refinance high-cost short-term credit, it must:

(1) give or send an information sheet to the customer; and

(2) where reasonably practicable to do so, bring the sheet to the attention of the customer before the refinance;

in the form of the arrears information sheet issued by the FCA referred to in section 86A of the CCA with the following modifications:

(3) for the title and first sentence of the information sheet substitute:

“High-cost short-term loans
Failing to repay on time
Think carefully - rolling over or extending your loan may not be the best option and may make things worse.”; and

(4) for the bullet points substitute: “

• Think carefully before borrowing more. Borrowing more money is likely to worsen your situation.

• Work out how much you owe. To do this, you will need to make a list of all the organisations you owe money to. A debt adviser can help you

• Put priority debts first. Some debts are more urgent than others because the consequences of not paying them can be more serious than for other debts, for example, mortgage, rent, council tax/ rates, or gas or electricity arrears. A debt adviser can help you to budget to keep your finances under control

Discuss options with your lender

• If you are having trouble paying back on time talk to your lender who can suggest ways to repay and make sure it is affordable for you.

• If you don’t, you may quickly face increased costs from interest or charges. Missed payments could affect your credit rating and make it more difficult to get credit in future.

Get free help and advice

• People that access advice resolve their issues more quickly than those that don’t and hundreds of thousands get free debt advice every year.

• Contact one of these organisations for free debt advice.”
(5) in relation to an arrears sheet to be used by an operator of an electronic system in relation to lending:

(a) for the bullet point headed “Work out how much money you owe” substitute:

“Work out how much money you owe. To do this, you will need to make a list of all those you owe money to. A debt adviser can help you.”;

(b) for the title “Discuss options with your lender” substitute

“Discuss options with your peer to peer lending platform (P2P platform)”;

(c) for the bullet point which begins “If you are having trouble ?” substitute

“If you are having trouble paying back on time talk to your P2P platform who can suggest ways to repay and make sure it is affordable for you.”.

[Note: Until the end of 30 June 2014, transitional provisions apply to ■ CONC 6.7.20 R: see ■ CONC TP 32]

6.7.21 G

A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

[Note: paragraph 6.25 of ILG]

6.7.22 G

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

[Note: paragraph 6.25 (box) of ILG]

6.7.23 R

A firm must not refinance high-cost short-term credit (other than by exercising forbearance) on more than two occasions.

[Note: Until the end of 30 June 2014, transitional provisions apply to ■ CONC 6.7.23 R: see ■ CONC TP 3.3]

Continuous payments authority: post agreement obligations

6.7.24 R

A firm must not amend the terms of a continuous payment authority without first obtaining the customer’s consent, after having fully explained to the customer the reason for the amendment.

[Note: paragraph 3.9miii of DCG]

6.7.25 R

■ CONC 6.7.24 R does not preclude the firm from:

(1) making amendments pursuant to a variation clause to which the customer has previously given consent, after it was fully explained to the customer the reason for the amendment; or
(2) reducing or waiving payments unilaterally, for example, under a repayment plan, provided that this is explained to the customer.

[Note: paragraph 3.9miii of DCG]

6.7.25A R

(1) Paragraph (2) applies if an individual other than the borrower (in this rule referred to as “the guarantor”) has:

(a) provided a guarantee or an indemnity (or both) in relation to:

(i) a regulated credit agreement; or

(ii) a P2P agreement in respect of which the borrower is an individual; and

(b) granted a continuous payment authority.

(2) CONC 6.7.24R and CONC 6.7.25R apply in respect of the guarantor as if references to the customer were references to the guarantor.

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

6.7.26 R

A firm must use the correct category code and identifier when presenting a payment request to the payment service provider.

[Note: paragraph 3.9miii of DCG]

6.7.26A R

CONC 6.7.27R to 6.7.40G do not apply to a firm in respect of a customer, who the firm has allowed to defer (in whole or part) the making of repayments under a regulated credit agreement for a credit card or retail revolving credit in the circumstances and for the duration set out in the guidance entitled Credit cards (including retail revolving credit) and coronavirus: temporary guidance for firms, the guidance entitled Credit cards (including retail revolving credit) and coronavirus: updated temporary guidance for firms or the guidance entitled Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance, for the period of the deferment.

Credit cards and retail revolving credit: persistent debt

6.7.27 R

(1) This rule applies to a firm with respect to communicating with a customer about, and receiving payments or exercising rights under, a regulated credit agreement for a credit card or retail revolving credit, if the firm assesses that the amount the customer has paid to the firm towards the credit card balance or retail revolving credit balance over the immediately preceding 18-month period comprises a lower amount in principal than in interest, fees and charges.

(2) A firm must assess whether the condition in paragraph (1) is met at least once a month.

(3) The rule in paragraph (1) does not apply:

(a) where the balance on the credit card or under the retail revolving credit agreement was below £200 at any point in the 18-month period; or
(b) where the firm has sent a communication to the customer in accordance with paragraph (4) in the preceding 18 months in relation to the credit card or retail revolving credit facility; or

(c) where the firm is taking steps to treat the customer with forbearance under CONC 6.7.37R, is otherwise taking equivalent or more favourable steps in relation to the customer’s account, or CONC 6.7.39R applies.

(4) Where the rule in paragraph (1) applies in relation to a credit card customer or a retail revolving credit customer, a firm must, in an appropriate medium (taking into account any preferences expressed by the customer about the medium of communication between the firm and the customer) and in plain language:

(a) notify the customer that, in the preceding 18 months, the amount the customer paid comprised a lower amount in principal than in interest, fees and charges;

(b) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;

(c) encourage the customer to contact the firm to discuss the customer’s financial circumstances and whether the customer can increase the amount of payments without an adverse effect on the customer’s financial situation;

(d) warn the customer of the potential implications if the customer’s payments comprise a lower amount in principal than in interest, fees and charges in two consecutive 18-month periods; and

(e) provide contact details for not-for-profit debt advice bodies and encourage the customer to contact one of them.

(1) For the purposes of CONC 6.7.27R, CONC 6.7.30R, CONC 6.7.34G, CONC 6.7.39R and CONC TP 8, “principal” comprises only the amount of credit drawn down by the customer under the credit card agreement or retail revolving credit agreement, and does not include any interest, fees or charges added to the account.

(2) The potential implications of which the firm should warn the customer under CONC 6.7.27R(4)(d) include the possibility that the account may be suspended, as well as any other steps that the firm might take, and the possible impact on the customer’s credit file.

(3) CONC 6.7.27R(4) does not specify a particular form of words to be used, and firms have discretion to tailor the language and tone of the communication required by that rule to the circumstances of the individual customer.

(4) Where the firm complies with 6.7.27R(4)(e), the firm may in addition provide the customer with the name and contact details of one or more other authorised persons who have permission to carry on debt counselling, provided that to do so is consistent with the firm’s obligations under the regulatory system.
(1) This rule applies in respect of a credit card customer or a retail revolving credit customer to whom a firm is required to have sent a communication under CONC 6.7.27R(4).

(2) The steps required under paragraphs (3) and (4) must be taken:
   (a) no earlier than nine months after; and
   (b) no later than 10 months after,
   the date on which the requirement to send a communication under CONC 6.7.27R arose.

(3) The firm must:
   (a) consider the pattern of payments made by the customer over the period beginning on the date on which the requirement to send a communication under CONC 6.7.27R(1) arose and ending on the date the firm takes steps under paragraph (2); and
   (b) assume that this will be representative of the customer’s payment pattern in the entire 18-month period immediately following the date on which the requirement to send a communication under CONC 6.7.27R(1) arose.

(4) If the analysis in (3) indicates that it is likely that CONC 6.7.30R will apply with respect to the customer, the firm must repeat the steps required under CONC 6.7.27R(4).

(5) The rule in paragraph (1) does not apply where the firm is already taking steps equivalent to, or more favourable than, those required under CONC 6.7.37R.

(1) This rule applies:
   (a) in respect of a credit card customer or a retail revolving credit customer to whom a firm is required to have sent a communication under CONC 6.7.27R (1); and
   (b) where the amount that the customer has paid to the firm towards the credit card or retail revolving credit balance, over the 18-month period immediately following the date on which the requirement to send a communication under CONC 6.7.27R(1) arose, comprises a lower amount in principal than in interest, fees and charges.

(2) This rule does not apply:
   (a) where the balance on the credit card or retail revolving credit was below £200 at any point in the 18-month period;
   (b) to any part of the balance on the credit card or retail revolving credit that has previously been subject to the requirements of paragraph (3).

(3) A firm must take reasonable steps to assist a credit card customer who falls under paragraph (1) to repay the balance on their credit card or retail revolving credit as it stands at the end of the period specified in that paragraph more quickly and in a way that does not adversely affect the customer’s financial situation.
(4) The firm is not required to take steps under (3) or 6.7.31R where the firm is already taking steps equivalent to, or more favourable than, those required under 6.7.37R, provided that the firm continues to take those steps.

Where a firm is required to assist a customer to repay more quickly under 6.7.30R(3), the firm must contact the customer to:

(1) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;

(2) provide contact details for not-for-profit debt advice bodies and encourage the customer to contact one of them;

(3) set out options for the customer to increase payments and request that the customer, within a specified reasonable period, respond to either:
   (a) confirm that the customer will increase payments in accordance with one of the options; or
   (b) where applicable, confirm that the options proposed are not sustainable for the customer; and

(4) inform the customer that if the firm does not receive a response to the request under paragraph (3) in the time specified, the firm will suspend or cancel the use of the credit card or retail revolving credit facility.

The options a firm may set out under 6.7.31R(3) in relation to a credit card or retail revolving credit include, for example, increasing the amount of monthly payments under a repayment plan, or transferring the balance to a fixed-sum unsecured personal loan.

6.7.32

(2) 6.7.31R does not prevent a firm from treating the customer more favourably, for example by writing off the balance on the account.

(3) 6.7.31R does not specify a particular form of words to be used, and firms have discretion to tailor the language and tone of the communication required by that rule to the circumstances of the individual customer.

(4) Where the firm complies with 6.7.31R(2), the firm may in addition provide the customer with the name and contact details of one or more other authorised persons who have permission to carry on debt counselling, provided that to do so is consistent with the firm’s obligations under the regulatory system.

The aim of the options a firm sets out under 6.7.31R(3) should be that the customer repays the balance in a reasonable period.

The FCA expects a “reasonable period” under paragraph (1), 6.7.37R and 6.7.38G to usually be between three and four years. Only in exceptional circumstances should the repayment
period extend beyond four years; and even in such cases, the extension should not be significant and there should be no additional cost to the customer as a result of the repayment period extending beyond four years. When setting the reasonable repayment period, firms may take into account the amount of the outstanding balance and minimum repayment amount. For example, where balances are relatively low this could point to a shorter reasonable repayment period.

6.7.34 G References in ■ CONC 6.7.27R, ■ CONC 6.7.31R(3) and ■ CONC 6.7.32G(1) to a customer increasing payments to the firm include circumstances where the amount a customer pays remains fixed at the same amount the customer was previously paying but, assuming there is no further spending on the account, represents an increase in the percentage of the outstanding principal that is repaid each month as the balance reduces.

6.7.35 R (1) Where a customer does not respond to a firm’s request under ■ CONC 6.7.31R(3), a firm must, at the end of the period specified in the request, suspend or cancel the customer’s use of the credit card or retail revolving credit facility.

(2) Where a customer confirms that one or more of the options proposed under ■ CONC 6.7.31 R(3) is sustainable, but states that they will not make the increased payments, a firm must suspend or cancel the customer’s use of the credit card or retail revolving credit facility.

(3) Where a firm suspends the customer’s use of the credit card or retail revolving credit facility under paragraph (1) and the customer subsequently responds to the firm’s request under ■ CONC 6.7.31R(3), the firm may withdraw the suspension if this would be in line with the other provisions in this section.

6.7.36 G Where a firm suspends or cancels the customer’s use of the credit card or retail revolving credit facility under ■ CONC 6.7.35R the firm is not, unless the customer responds to the firm’s request under ■ CONC 6.7.31R(3), required to take further steps under ■ CONC 6.7.37R to ■ CONC 6.7.39R. Firms are however reminded of ■ CONC 6.7.3AR, which requires firms to take appropriate action where there are signs of actual or possible financial difficulties, and ■ CONC 7.3.4R, which requires firms to treat customers in default or arrears difficulties with forbearance and due consideration.

6.7.37 R Where a customer:

(1) confirms to the firm that the options set out under ■ CONC 6.7.31R(3) are unsustainable; or

(2) informs the firm that they will increase payments in accordance with one of the options proposed under ■ CONC 6.7.31G(3) but the patterns of payments actually made under the repayment plan after it is put in place, or other indicators, show that the customer is unlikely to repay the balance in a reasonable period,

the firm must treat the customer with forbearance and due consideration.
(1) The steps a firm takes to treat a customer with forbearance under CONC 6.7.38 should have the aim of assisting the customer to make sustainable repayments to repay the outstanding balance in a reasonable period, and may include reducing, waiving or cancelling any interest, fees or charges.

(2) The FCA expects that it will generally be necessary for firms to suspend or cancel the use of the credit card or retail revolving credit facility of a customer that the firm is required to treat with forbearance under CONC 6.7.37R with a view to ensuring the customer repays the outstanding balance in a reasonable period. This expectation does not apply, however, where the suspension or cancellation of use of the credit facility would cause a significant adverse impact on the customer’s financial situation, for example where the customer depends on the credit facility for meeting essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills) or the purchase of essential items (which may include but is not limited to items such as school uniform, baby essentials or a refrigerator). Equally, the FCA considers that it will generally not be appropriate to withdraw the suspension of the use of a customer’s credit card under CONC 6.7.35R(3) if the firm is required to treat the customer with forbearance under CONC 6.7.37R.

Where a firm does not suspend or cancel the use of the credit card or retail revolving credit facility of a customer falling under CONC 6.7.30R, the firm must take reasonable steps to ensure that the customer does not, in the 18-month period immediately following, repay an amount to the firm towards the credit card or retail revolving credit balance that comprises a lower amount in principal than in interest, fees and charges in relation to any spending on the card in this period.

Compliance with any of the requirements in CONC 6.7.27R to CONC 6.7.39R does not remove or reduce the obligation on a firm to:

(1) take appropriate action where there are signs of actual or possible financial difficulties under CONC 6.7.3AR; or

(2) treat customers in default or arrears difficulties with forbearance and due consideration under CONC 7.3.4R,

and vice versa.

**Authorised non-business overdraft agreements: reductions in credit limits**

A firm must provide an easy, efficient and prompt process by which a borrower under an authorised non-business overdraft agreement may request:

(1) a reduction in the credit limit under that agreement; or

(2) to terminate the authorised non-business overdraft agreement but retain the current account that it is associated with, where the terms of the agreement permit this.
A firm is not required to approve all requests from a borrower to reduce their credit limit or to terminate their authorised non-business overdraft agreement. When considering such a request, a firm should have regard to its obligation to treat customers fairly. In many circumstances it would be unfair to require a borrower to retain an unwanted facility. The following are examples of when it may be fair to refuse a request:

1. The current account that the authorised non-business overdraft agreement is associated with is offered on terms that it must be associated with an authorised non-business overdraft agreement, or with an authorised non-business overdraft agreement with a particular credit limit; or

2. The borrower's indebtedness exceeds the reduced credit limit requested; or

3. The borrower has requested termination of an authorised non-business overdraft agreement but there are sums outstanding under that agreement.
6.8 Post contract business practices: credit brokers

Application

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

Business practices

6.8.2 Where a firm takes on responsibility for giving information to a customer or receiving information from a customer in accordance with provisions of the CCA (for example, supplying a copy of an executed regulated credit agreement under section 61A of the CCA) the firm should ensure it is familiar with the relevant statutory requirements and has adequate system and procedures in place to comply with the provision in question.

Refunds of brokers’ fees

6.8.3 (1) Under section 155 of the CCA an individual has a right to a refund of the firm’s fee (less £5) (or for that fee not to be payable) where the individual has not entered into an agreement to which section 155 applies within six months of an introduction:

(a) to a source of credit or of bailment (or in Scotland of hire); or

(b) to another firm that carries on credit broking of the kind specified in article 36A(1)(a) to (c) of the RAO disregarding the effect of paragraph (2) of that article (that is, the effecting of an introduction to a lender or an owner, or to another person who effects such introductions by way of business).

[Note: paragraph 6.1 of CBG]

(2) It is immaterial for the purposes of section 155 of the CCA why no agreement has been entered into (for example, an individual should be entitled to a refund where the individual decides for any reason not to enter into an agreement within the relevant time period).

[Note: paragraph 6.2 of CBG]

(3) Section 155 does not apply where the introduction is for a regulated mortgage contract or a home purchase plan and the person charging the fee is an authorised person or an appointed representative. Arranging and advising in relation to regulated mortgages contracts and home purchase plans are regulated activities under the Regulated Activities Order and carrying on those activities would require permissions covering those activities.
[Note: paragraph 6.4 of CBG]

(4) In relation to a credit agreement the refund would apply to any sum which is an amount that is or would enter in to the total charge for credit paid or payable to or via the credit broker whether or not the firm describes it as a fee or commission.

[Note: paragraphs 6.11 and 6.13 of CBG]

(5) Where an individual withdraws from a regulated credit agreement under section 66A of the CCA or cancels a cancellable agreement (see section 67 of the CCA) under section 69 of the CCA the agreement is treated as never have been entered into and hence the period referred to in section 155 continues to apply in these circumstances.

[Note: paragraph 6.10 of CBG]

6.8.4 R Where section 155 of the CCA applies, a firm must respond promptly to a request for a refund; this includes making payment of the refund promptly if a refund is payable.

[Note: paragraph 6.17 of CBG]

6.8.4A R If a customer has not entered into an agreement referred to in section 155(2) of the CCA within six months of the customer being introduced by the firm to a potential source of credit or of bailment (or in Scotland of hire), or to another firm that carries on credit broking of the kind specified in article 36A(1)(a) to (c) of the RAO (disregarding the effect of paragraph (2) of that article), as soon as reasonably practicable after the expiry of that six-month period a firm must by any method clearly bring to the customer’s attention:

(1) the right to request a refund under section 155 of the CCA; and

(2) how to exercise the right to request the refund.

[Note: paragraph 6.19d of CBG]

6.8.4B G The FCA would consider it to be reasonably practicable to comply with CONC 6.8.4A R within five working days of the expiry of the six-month period.

6.8.5 G (1) An individual does not need to refer to the right under section 155 of the CCA in order to be entitled to a refund.

(2) A firm should respond promptly to a request for a refund. Firms are reminded of the rule in CONC 11.1.12R to return sums without undue delay, and within 30 calendar days, on cancellation of a distance contract.

(3) In circumstances where individuals request refunds and the firm knows, or ought to know, that agreements to which section 155
applies would not be entered into within six months, the firm should not make the individuals wait for the six month period to elapse before making the refund.

[Note: paragraphs 6.17 and 6.18 of CBG]