

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*.



**6.2 Assessment of creditworthiness:
during agreement [deleted]**

[deleted]

6.3 Information to be provided on a current account agreement and on significant overdrawn

Application

6.3.1

R

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 overdraw 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

R

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

Current account information

6.3.3

R

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 overdrawn without prior arrangement

6.3.4

R

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

6.4.1

R

This section applies to

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

Appropriation

6.4.2

R

- (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 **R** This section applies to a *firm* with respect to *consumer credit lending*.

Notice of assignment

6.5.2 **R** (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

R

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

G

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

R

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

R

Without prejudice to the generality of **CONC 6.6.3 R**, the entries in the books or other records in respect of the dealings mentioned in **CONC 6.6.3 R (1)** to **CONC 6.6.3 R (3)** must contain the information in **CONC 6.6.7 R** to **CONC 6.6.9 R**.

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

6.6.5 **R** Where the entries in relation to any article taken in *pawn* in ■ CONC 6.6.4 R 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]

6.6.6 **R** A *firm* must retain the books or other records required by ■ CONC 6.6.3 R 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

6.6.7 **R** 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 take in *pawn*.

[Note: paragraph 1 of Schedule to SI 1983/1565]

6.6.8 **R** 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]

6.6.9 **R** 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 **R**
- (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*.

Business practices

- 6.7.2 **R**
- (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 **G**
- 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

- 6.7.3A** **R** 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.
- 6.7.3B** **G**
- (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**.
- 6.7.3C** **R** 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.
- 6.7.3D** **G** 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

6.7.4 **R** 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]

6.7.5 **R** (1) 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]

- (2) 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]

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

6.7.6 **R** 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]

6.7.7 **R** 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]

6.7.8 **R** A firm under a *regulated credit agreement* for a credit card or a store 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]

6.7.9

R

A *firm* under a *regulated credit agreement* for a credit card or store card must notify the *customer* of a proposed increase in the *credit limit* under the agreement at least 30 days before the increase comes into effect, except where:

[Note: paragraph 6.17 of ILG]

- (1) the increase is at the express request of the *customer*: or
- (2) 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.

6.7.10

R

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

G

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

R

[deleted]

6.7.13

R

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 **R** 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 **G** 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 **R** 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*]

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.

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.....

6.7.20 **R** 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]

Credit cards: 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.

6.7.28

G

- (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*.

6.7.29

R

- (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.

6.7.30

R

- (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 ■ CONC 6.7.31R where the *firm* is already taking steps equivalent to, or more favourable than, those required under ■ CONC 6.7.37R, provided that the *firm* continues to take those steps.

6.7.31

R

Where a *firm* is required to assist a *customer* to repay more quickly under ■ CONC 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.

6.7.32

G

(1) The options a *firm* may set out under ■ CONC 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.

(2) ■ CONC 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) ■ CONC 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 ■ CONC 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*.

6.7.33

G

- (1) The aim of the options a *firm* sets out under ■ CONC 6.7.31R(3) should be that the *customer* repays the balance in a reasonable period.
- (2) The *FCA* expects a “reasonable period” under paragraph (1), ■ CONC 6.7.37R and ■ CONC 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.
- 6.7.38** **G**
- (1) The steps a *firm* takes to treat a *customer* with forbearance under ■ CONC 6.7.37R 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.
- 6.7.39** **R** 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.
- 6.7.40** **G** 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.

6.8 Post contract business practices: credit brokers

Application

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

Business practices

6.8.2 **G** 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 **G**

(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*]