Chapter 7

Arrears, default and recovery (including repossessions)
7.1 Application

Who? What?

7.1.1 This chapter applies, unless otherwise stated in or in relation to a rule, to:

1. a firm with respect to consumer credit lending;
2. a firm with respect to consumer hiring;
3. a firm with respect to operating an electronic system in relation to lending, in relation to a borrower under a P2P agreement;
4. a firm with respect to debt collecting.

7.1.2 The following sections provide otherwise for application:

1. CONC 7.12 (lenders’ responsibilities in relation to debt) applies only to firms in respect of consumer credit lending;
2. CONC 7.17 to CONC 7.19 apply only to firms operating electronic systems in relation to lending in relation to borrowers under P2P agreements as set out in those sections.

7.1.3 (1) In accordance with CONC 1.2.2 R firms must ensure that their employees and agents comply with CONC and must take reasonable steps to ensure that other persons acting on the firm's behalf act in accordance with CONC.

2. The rule in CONC 1.2.2 R is particularly important in relation to the requirements in CONC 7, for example, in dealing with an individual from whom the person referred to in the rule is seeking to collect a debt.

3. In this chapter the expression “arrears” includes any shortfall in one or more payment due from a customer under an agreement to which the chapter applies.

Agreements where there is a guarantor etc

7.1.4 (1) In this chapter, except for CONC 7.6.15AG:

a. a reference to a borrower, a customer or a hirer includes a reference to an individual other than the borrower or the hirer.
IN this chapter, referred to as “the guarantor”) who has provided a guarantee or an indemnity (or both) in relation to:

(i) a regulated credit agreement; or
(ii) a regulated consumer hire agreement; or
(iii) a P2P agreement in respect of which the borrower is an individual;

where it would not do so but for this rule;

(b) a reference (other than in this rule) to a credit agreement, a consumer hire agreement or a P2P agreement includes a reference to the document that includes the guarantee or the indemnity (or both);

(c) a reference to a repayment includes a reference to a payment due under the guarantee or under the indemnity;

(d) a reference to paying or repaying the debt includes a reference to making (in whole or in part) a payment due under the guarantee or under the indemnity; and

(e) a reference to the adequate explanation required by CONC 4.6.2R includes a reference to the adequate explanation required by CONC 4.6.5R.

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

(3) This rule does not apply to CONC 7.1.4(1)(a), CONC 7.3.1G, CONC 7.4.1R, CONC 7.4.2R, CONC 7.5.1G, CONC 7.6.2AR, CONC 7.6.2BG, CONC 7.15.3G, CONC 7.15.4R, CONC 7.15.5G, or CONC 7.17 to CONC 7.19.

In relation to CONC 7.1.4(1)(a), firms are reminded that the definitions of customer and borrower include, in relation to debt collecting and debt administration, a person providing a guarantee or indemnity under the agreement. (See CONC 7.3.1G(2).)
7.2 Clear effective and appropriate arrears policies and procedures

Arrears policies

7.2.1 A firm must establish and implement clear, effective and appropriate policies and procedures for:

1. dealing with customers whose accounts fall into arrears;

   [Note: paragraph 7.2 of ILG]

2. the fair and appropriate treatment of customers, who the firm understands or reasonably suspects to be particularly vulnerable.

   [Note: paragraphs 7.2 and 7.2(box) of ILG and 2.2 (box) of DCG]

7.2.2 Customers who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable customers.

   [Note: paragraph 2.2 (box) of DCG]

7.2.3 In developing procedures and policies for dealing with customers who may not have the mental capacity to make financial decisions, firms may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines “Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt”.

   [Note: paragraph 3.7r (box) of DCG]
7.3  Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors

7.3.1  (1) In relation to debt collecting and debt administration, the definition of customer refers to an individual from whom the payment of a debt is sought; this would include where a firm mistakenly treats an individual as the borrower under an agreement and mistakenly or wrongly pursues the individual for a debt.

[Note: paragraph 1.12 of DCG]

(2) In relation to debt collecting and debt administration, the definitions of customer and borrower are given extended meanings to include, as well as those other people they generally include, a person providing a guarantee or indemnity under a credit agreement and also a person to whom rights and duties under the agreement are passed by assignment or operation of law. This reflects article 39M of the Regulated Activities Order.

Dealing fairly with customers in arrears or default

7.3.2  When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers’ interests) to treat its customers fairly.

[Note: paragraphs 7.12 of ILG and 2.2 of DCG]

Forbearance and due consideration

7.3.3  Where a customer under a regulated credit agreement fails to make an occasional payment when it becomes due, a firm should, in accordance with Principle 6, allow for such unmade payments to be made within the original term of the agreement unless:

(1) the firm reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the total amount payable to be unsustainable or otherwise cause a customer to be in financial difficulties; or

[Note: paragraph 4.7 of ILG]

(2) the firm reasonably believes that terminating the agreement will mitigate such adverse consequences for the customer and before terminating the agreement it explains this to the customer.
A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

[Note: paragraphs 7.3 and 7.4 of ILG and 2.2 of DCG]

Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:

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

   [Note: paragraph 7.4 (box) of ILG]

2. Allowing deferment of payment of arrears:
   (a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or
   (b) provided that doing so does not make the term for the repayments unreasonably excessive;

3. 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).

Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.

[Note: paragraph 2.2 of DCG]

[deleted]

(1) If a customer is in default or in arrears difficulties, the firm should, where appropriate:
   (a) inform the customer that free and impartial debt advice is available from not-for-profit debt advice bodies; and
   (b) refer the customer to a not-for-profit debt advice body.

(2) A firm may refer the customer to a not-for-profit debt advice body by, for example, providing the customer with a copy of the current arrears information sheet under section 86 of the CCA, or with the name and contact details of a not-for-profit debt advice body or the Money Advice Service; or directly transferring the customer's call to a not-for-profit debt advice body.

(3) In addition, the firm may provide the customer with the name and contact details of another authorised person who has permission for
debt counselling, provided that to do so is consistent with the firm’s obligations under the regulatory system.

7.3.8 G
An example of where a firm is likely to contravene Principle 6 and ■ CONC 7.3.4 R is where the firm does not allow for alternative, affordable payment amounts to repay the debt due in full, where the customer is in default or arrears difficulties and the customer makes a reasonable proposal for repaying the debt or a debt counsellor or another person acting on the customer’s behalf makes such a proposal.

[Note: paragraphs 7.16 of ILG and 3.7j of DCG]

7.3.9 R
A firm must not operate a policy of refusing to negotiate with a customer who is developing a repayment plan.

[Note: paragraph 3.9d (box) of DCG]

7.3.10 R
A firm must not pressurise a customer:

1) to pay a debt in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer’s financial circumstances;

[Note: paragraph 7.18 of ILG]

2) to pay a debt within an unreasonably short period of time; or

[Note: paragraphs 3.7i of DCG and 7.18 of ILG]

3) to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.

[Note: paragraph 3.7b of DCG]

7.3.10A G
1) An example of behaviour by or on behalf of a firm which is likely to contravene ■ CONC 7.3.10R and Principle 6 is pressurising a customer to raise funds to repay a debt by arranging the receipt of a lump sum from the customer’s pension scheme.

2) Firms are also reminded of ■ PERG 12.6G which contains guidance on the regulated activity of advising on conversion or transfer of pension benefits.

7.3.11 R
A firm must suspend the active pursuit of recovery of a debt from a customer for a reasonable period where the customer informs the firm that a debt counsellor or another person acting on the customer’s behalf or the customer is developing a repayment plan.

[Note: paragraphs 7.12 of ILG and 3.7m of DCG]

7.3.12 G
A “reasonable period” in ■ CONC 7.3.11 R should generally be for thirty days where there is evidence of a genuine intention to develop a plan and the
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firm should consider extending the period for a further thirty days where there is reasonable evidence demonstrating progress to agreeing a plan.

[Note: paragraphs 7.12 (box) ILG and 3.7m of DCG]

7.3.13 G A firm seeking to recover debts should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

[Note: paragraphs 7.16 (box) of ILG and 3.7k of DCG]

Proportionality

7.3.14 R (1) A firm must not take disproportionate action against a customer in arrears or default.

[Note: paragraphs 7.14 (box) of ILG and 3.7t of DCG]

(2) In accordance with (1) a firm must not, in particular, apply to court for an order for sale or submit a bankruptcy petition, without first having fully explored any more proportionate options.

[Note: paragraph 7.14 (box) of ILG]

7.3.15 G A firm should not make undue, excessive or otherwise unfair use of statutory demands (within the meaning of section 268 of the Insolvency Act 1986) when seeking to recover a debt from a customer.

[Note: paragraphs 7.10 of ILG and 3.7n of DCG]

Enforcement of debts

7.3.16 G A firm should not take steps to enforce a debt if it is aware that the customer is subject to a bankruptcy order (or in Scotland where sequestration is awarded in relation to the customer), a debt relief order or an individual voluntary arrangement (or, in Scotland, a protected trust deed or a Debt Arrangement Scheme).

[Note: paragraph 3.9h of DCG]

7.3.17 R A firm must not take steps to repossess a customer’s home other than as a last resort, having explored all other possible options.

[Note: paragraphs 7.14 of ILG and 3.7t of DCG]

7.3.18 R A firm must not threaten to commence court action, including an application for a charging order or (in Scotland) an inhibition or an order for sale, in order to pressurise a customer in default or arrears difficulties to pay more than they can reasonably afford.

[Note: paragraphs 7.14 of ILG and 3.7i (box) of DCG]
Firms seeking to recover debts under regulated credit agreements secured on land in England and Wales should have regard to the requirements of the relevant pre-action protocol (PAP) issued by the Civil Justice Council. The aims of the PAP are to ensure that a firm and a customer act fairly and reasonably with each other in resolving any matter concerning arrears, and to encourage more pre-action contact in an effort to seek agreement between the parties on alternatives to repossession. The Pre-action Protocol on Possession Proceedings applies to all mortgage repossession cases in Northern Ireland. The Home Owner and Debtor Protection (Scotland) Act 2010 provides for pre-action requirements to be placed on secured lenders in Scotland.

[Note: paragraphs 7.14 of ILG and 3.7s of DCG]
7.4 Information on status of debts

7.4.1 A firm must provide the customer or another person acting on behalf of the customer with information on the amount of any arrears and the balance owing.

[Note: paragraph 3.3f of DCG]

7.4.2 Where:

(1) a customer offers a settlement payment lower than the total amount owing; or

(2) a lender under a regulated credit agreement or an owner under a regulated consumer hire agreement decides to stop pursuing a customer in respect of a debt arising under the agreement;

and the debt (or part of it) continues to exist notwithstanding the acceptance of the customer’s offer or the decision to cease to pursue the debt, the lender or owner must ensure that the continuing existence of the debt and the possibility of the customer being pursued by another firm who purchases the debt is explained in clear terms to the customer.

[Note: paragraph 3.3i of DCG]
7.5 Pursuing and recovering repayments

7.5.1 (1) Failure to comply with CONC 6.5.2 R, which sets out when a firm must give notice to a customer where a regulated credit agreement has been assigned to a third party, will be taken into account by the FCA in taking decisions about a firm’s permission or about taking other action.

[Note: paragraph 3.7g of DCG]

(2) CONC 6.5.2 R makes it clear that where arrangements for servicing the credit change at the time of the assignment of a regulated credit agreement, notice must be given to the customer as soon as reasonably possible. A firm should give notice as required under that rule in order that any change should not adversely impact on a customer’s existing repayment arrangements. In addition, if arrangements for servicing the debt otherwise change so far as the customer is concerned, the firm should notify the customer on or before that change.

[Note: paragraph 3.7h of DCG]

7.5.2 A firm must not pursue an individual whom the firm knows or believes might not be the borrower or hirer under a credit agreement or a consumer hire agreement.

[Note: paragraph 3.5f of DCG]

7.5.3 A firm must not ignore or disregard a customer’s claim that a debt has been settled or is disputed and must not continue to make demands for payment without providing clear justification and/or evidence as to why the customer’s claim is not valid.

[Note: paragraph 3.7o of DCG]

7.5.4 A firm acting on behalf of a lender or owner must, unless the firm has authority from the lender or owner to accept such an offer, refer a reasonable offer by the customer to pay by instalments to the lender or owner.

[Note: paragraph 3.9f of DCG]
A firm acting on behalf of a lender or owner must pass on payments received from a customer and/or details of a customer’s outstanding balance to the lender or owner in a timely manner or, provided the effect of the agreement does not impact adversely on the customer, in accordance with an agreement between the firm and lender or owner in question.

[Note: paragraph 3.9g of DCG]

A timely manner in CONC 7.5.5 R would normally be within five working days of receipt of payment by the firm.

[Note: paragraph 3.9g of DCG]
7.6 Exercise of continuous payment authority

Recovery and continuous payment authorities etc.

7.6.1 A firm must not exercise its rights under a continuous payment authority (or purport to do so):

(a) unless it has been explained to the customer that the continuous payment authority would be used in the way in question; and

(b) other than in accordance with the terms specified in the credit agreement or the P2P agreement.

(2) If a firm wishes a customer to change the terms of a continuous payment authority it must contact the customer and:

(a) provide the customer with an adequate explanation of the reason for and effect of the proposed change, including any effect it would have on the matters in CONC 4.6.2R (2); and

(b) once it has done so, obtain the consent of the customer.

[Note: paragraph 3.9mi of DCG]

7.6.2 A firm should not:

(1) request a payment service provider to make a payment from the customer’s payment account unless:

(a) (i) the amount of the payment (or the basis on which payments may be taken) is specified in or permitted by the credit agreement or P2P agreement; and

(ii) the amount of the payment (or the basis on which payments may be taken) was referred to in the adequate explanation required by CONC 4.6.2R; or

(b) the firm has complied in relation to such a request with CONC 7.6.1R (2);

(2) request a payment service provider to make a payment to recover default fees or other sums unless:

(a) (i) the amount (or the basis on which default fees or other sums may be taken) is specified in the credit agreement or P2P agreement; and
(ii) the amount (or the basis on which default fees or other sums may be taken) was referred to in the adequate explanation required by CONC 4.6.2 R; or

(b) the firm has complied in relation to such a request with CONC 7.6.1 R (2);

(3) other than where CONC 7.6.14 R (2) applies, request a payment service provider to make a payment from the customer’s payment account of an amount that is less than the amount due at the time of the request, unless the firm:

(a) (i) is permitted to do so by the credit agreement or P2P agreement; and

(ii) the adequate explanation required by CONC 4.6.2 R indicated that part payment (a sum due which is less than the full sum due at the time the firm’s payment request is made) could be requested if the full amount was not available and specified the basis on which and the frequency with which such requests for payment could be made and any minimum amount or percentage that would be requested; or

(b) the firm has complied in relation to such a request with CONC 7.6.1 R (2).

(4) request a payment service provider to make a payment from the customer’s payment account before the due date of payment as specified in the credit agreement or P2P agreement, unless the firm has complied with CONC 7.6.1 R (2);

(5) request a payment service provider to make a payment from the customer’s payment account after the due date on a date, or within a period, or with a frequency other than as specified in the credit agreement or P2P agreement and referred to in the adequate explanation, unless the firm has complied with CONC 7.6.1 R (2);

(6) request a payment service provider to make a payment from the payment account of a third party other than as specifically agreed with the third party or agreed with the customer following the third party’s confirmation to the firm that the third party consents to the arrangement.

[Note: paragraph 3.9mi of DCG]

(1) This rule applies where the terms of a regulated credit agreement or a P2P agreement do not provide for a continuous payment authority and it is proposed that a customer will grant a continuous payment authority to:

(a) a lender or a person who has permission to carry on the activity of operating an electronic system in relation to lending; or

(b) a debt collector provided that the debt collector is acting under an arrangement with the lender or the person who has permission to carry on the activity of operating an electronic system in relation to lending, the effect of which is that a payment by the customer to the debt collector amounts to a discharge or reduction of the debt due to the lender.
(2) The firm which proposes the continuous payment authority to the customer must, before the customer grants the continuous payment authority:

(a) explain why a continuous payment authority is proposed;
(b) provide the customer with an adequate explanation of the matters in CONC 4.6.2R(2);
(c) give the customer information, on paper or in another durable medium, setting out, in plain and intelligible language, the terms of the continuous payment authority and how it will operate; and
(d) give the customer a reasonable opportunity to consider the explanations required by (a) and (b) and the information required by (c).

(3) A firm must not propose that a customer should grant a continuous payment authority, and must not exercise rights under such an authority, in respect of repayments under a regulated credit agreement or a P2P agreement, the terms of which do not already provide for a continuous payment authority, unless:

(a) the customer is in arrears or default in respect of the agreement; and

(b) a lender or a person who has permission to carry on the activity of operating an electronic system in relation to lending, or a debt collector acting under an arrangement with the lender or the person, is exercising forbearance in respect of the customer in relation to the agreement.

7.6.2B

(1) Where a regulated credit agreement or a P2P agreement does not incorporate the terms of a continuous payment authority, CONC 7.6.2AR enables a continuous payment authority to be put in place (for example, for a repayment plan) without necessarily requiring an amendment to the agreement. But CONC 7.6.2AR applies only where the customer is in arrears or default, and the creation of the continuous payment authority supports the fair treatment of the customer and facilitates the exercise of forbearance (see CONC 7.3.4R and CONC 7.3.5G).

(2) CONC 7.6.2AR also permits a continuous payment authority to be granted to a debt collector, provided that the debt collector is acting under an arrangement with a lender or a person who has permission to carry on the activity of operating an electronic system in relation to lending, such that a payment to the debt collector is treated as a payment to the lender, and the requirements of CONC 7.6.2AR(3) are met.

(3) CONC 7.6.2AR is subject to the rule in CONC 7.6.12R which restricts firms to two requests under a continuous payment authority for a sum due for high-cost short-term credit.

(4) Whether a forbearance that involves the creation of a continuous payment authority amounts to an agreement that varies or supplements a regulated credit agreement (rather than merely an indulgence to the customer) will depend on the circumstances. If there is an agreement that varies or supplements a regulated credit agreement, the requirements of CONC 7.6.2AR must be met.
7.6.3 R A firm must exercise its rights under a continuous payment authority in a manner which is reasonable, proportionate and not excessive and must exercise appropriate forbearance if it becomes aware that the customer is or may be experiencing financial difficulties.

[Note: paragraph 3.9mii of DCG]

7.6.4 G Whether exercising rights under a continuous payment authority is reasonable, proportionate and not excessive (as regards the frequency or period of collection attempts), will depend on the circumstances, including:

1. whether the firm is aware or has reason to believe that the customer is in actual or potential financial difficulties which the exercise of rights under a continuous payment authority may exacerbate; and

2. whether the customer has been notified of the failure to collect the payment and has responded to contact from the firm.

[Note: paragraph 3.9mii of DCG]

7.6.5 G A firm is likely to contravene CONC 7.6.3 R if it:

1. requests a payment service provider to make a payment from the customer's payment account before income or other funds may reasonably be expected to reach the account; for example, this is likely to be relevant where a firm is aware of the customer's salary payment date; or

2. requests a payment service provider to make a payment from the customer's payment account where it has reason to believe that there are insufficient funds in the account or that taking the payment would leave insufficient funds for priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills or utility bills); or

3. requests a payment service provider to make a part payment (a sum due which less than the full sum due at the time the firm's payment request is made) of the sum due from the customer's payment account before it has made reasonable attempts to collect the full payment of the sum due on the due date; or

4. continues to exercise its rights under the continuous payment authority for an unreasonable period after the payment due date without taking steps to establish the reason for the payment failure.

[Note: paragraph 3.9mii of DCG]
Where permissible, a firm should only make a reasonable number of payment requests to a payment service provider to collect a part payment (a sum due which is less than the full sum due at the time the firm’s payment request is made) from the customer’s payment account, having regard to the possibility that the customer may be in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

A firm must not exercise its rights under a continuous payment authority:

1. if the customer provides reasonable evidence to the firm of being in financial difficulties and the customer cannot afford to repay the debt; or

2. where the firm otherwise becomes aware of the customer being in financial difficulties and that the customer cannot afford to repay the debt.

[Note: paragraph 3.9mii (box) of DCG]

(1) If a firm becomes aware that a customer is in financial difficulties, the firm should reassess the payment arrangement and should consider reasonable proposals to revise the payment schedule and alternative repayment arrangements.

[Note: paragraph 3.9mii (box) of DCG]

(2) Where a customer informs a firm of being in financial difficulties, pending receipt of evidence to that effect, a firm should consider suspending exercise of its rights under a continuous payment authority.

In the FCA’s view, a firm’s inability to recover the whole of the amount due by the end of the next working day after the date on which it was due would indicate that the customer may be experiencing financial difficulties. In such a case, a firm should suspend exercising its rights under the continuous payment authority until it has made reasonable efforts to contact the customer to establish the reason why payment was unsuccessful and whether the customer is in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

If the firm and the customer have agreed an alternative payment date as a contingency option if payment is not available on the due date, the firm should suspend the exercise of its rights under the continuous payment authority after the due date, and again after the alternative payment date (if the firm is unable to recover the amount due at the end of that day) and make reasonable efforts (in accordance with CONC 7.6.9) to contact the customer to establish the reason why payment was unsuccessful and whether the customer is in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]
If reasonable efforts to contact the customer are unsuccessful or a customer refuses to engage with the firm and there is no further evidence of financial difficulties, any subsequent exercise of its rights under the continuous payment authority should be reasonable and not excessive, having regard to the possibility that an unresponsive customer may nevertheless be in financial difficulties and that a customer who was not in financial difficulties at the time of contact may subsequently be in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

Continuous payment authorities and high-cost short-term credit

(1) Subject to (3) to (5), a firm must not request a payment service provider to make a payment, under a continuous payment authority, to collect (in whole or in part) a sum due for high-cost short-term credit if it has done so in connection with the same agreement for high-cost short-term credit on two previous occasions and those previous payment requests have been refused.

(2) For the purposes of (1) and (3):
   (a) if high-cost short-term credit has been refinanced, except in exercise of forbearance, the agreement is to be regarded as the same agreement; and
   (b) “refinance” and “exercise forbearance” have the same meaning as in CONC 6.7.17 R.

(3) Where a firm exercises forbearance:
   (a) paragraph (1) applies or continues to apply to the agreement; but
   (b) any refusal of a payment request that took place before the time at which the forbearance was granted is to be disregarded for the purposes of (1).

(4) Paragraph (5) applies following the refusal of two payment requests a firm has made to a payment service provider under a continuous payment authority to collect a sum due for high-cost short-term credit, where the firm proposes to refinance the high-cost short term credit in question in accordance with CONC 6.7.17 R to CONC 6.7.23 R.

(5) If the firm contacts the customer and, in the course of an dialogue between the firm and the customer:
   (a) the firm notifies the customer of the refusal of the payment requests;
   (b) the firm reminds the customer of the matters in CONC 4.6.2R (2), taking account of any proposed changes to the terms of the continuous payment authority that will apply following the refinance if the customer consents; and
   (c) the customer gives express consent to the firm further exercising its rights under the continuous payment authority following the refinance;
the firm may then make further payment requests under the continuous payment authority following the refinance in accordance with CONC 7.6, and paragraph (1) applies as if the firm had not made a payment request under the continuous payment authority before the refinance.

(6) This rule does not apply to an agreement which provides for repayment in instalments.

[Note: Until the end of 30 June 2014, transitional provisions apply to CONC 7.6.12 R: see CONC TP 3.4]

Continuous payment authorities and high-cost short-term credit: instalment payments

(1) Where:

(a) high-cost short-term credit provides for repayment in instalments; and

(b) a firm has on two previous occasions made a payment request, under a continuous payment authority, to collect (in whole or in part) the same instalment due under the agreement, which have been refused;

subject to (3) and (4), the firm must not make a further payment request under the continuous payment authority to collect that instalment.

(2) The firm must not make a further payment request under the continuous payment authority to collect any other instalment that is or becomes due under the agreement, unless any request is in accordance with CONC 7.6 and in the course of a dialogue between the firm and the customer:

(a) the firm notifies the customer of the refusal of the payment requests;

(b) repayment of the instalment referred to in (1)(b) has been made using a method other than a continuous payment authority and the customer is not in arrears; and

(c) where (a) and (b) apply, the firm has reminded the customer of the date and amount of the next instalment.

(3) If, where the prohibition in (1) applies, a firm exercises forbearance within the meaning of CONC 6.7.17 R the firm must not make a further payment request under the continuous payment authority to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:

(a) a payment request is in accordance with CONC 7.6;

(b) the firm notifies the customer of the refusal of the payment requests; and

(c) in the course of a dialogue between the firm and the customer, the firm reminds the customer of the date and amount of the next instalment and following which the customer gives express consent to further payment requests being made under the continuous payment authority.
(4) If, where the prohibition in (1) applies, a firm adds no charge or additional interest in connection with missing a payment on the due date, the firm must not make a further payment request under the continuous payment authority to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:

(a) a payment request is in accordance with CONC 7.6;

(b) the customer has missed making a payment on the due date; and

(c) in the course of a dialogue between the firm and the customer, the firm reminds the customer of the date and amount of the next instalment and following which the customer gives express consent to further payment requests being made under the continuous payment authority.

[Note: Until the end of 30 June 2014, transitional provisions apply to CONC 7.6.13 R: see CONC TP 3.5]

(1) Subject to (2), a firm must not request a payment service provider to make a payment under a continuous payment authority to collect a sum due for high-cost short-term credit if that sum is less than the full sum due at the time the request is made.

(2) Where a firm:

(a) following contact with a customer, refinances the agreement in accordance with CONC 6.7.17 R to CONC 6.7.23 R by granting an indulgence which allows for one or more repayment of a reduced amount under a repayment plan;

(b) notifies the customer of the number and frequency of repayments and their amount under the repayment plan; and

(c) the customer gives express consent to the firm to make payment requests to collect the repayments notified under the plan;

[Note: Until the end of 30 June 2014, transitional provisions apply to CONC 7.6.14 R: see CONC TP 3.6]

paragraph (1) does not prevent the firm from making a payment request in accordance with CONC 7.6 under a continuous payment authority to collect repayments of those amounts in accordance with the plan.

(1) CONC 7.6.12 R, CONC 7.6.13 R and CONC 7.6.14 R do not prevent a firm accepting payment (including a part payment) from a customer using a means of payment other than under a continuous payment authority. If, for example, a customer consents separately that a single payment of a specified amount may be taken on the same day or on another specified day using his or her debit card details, this is excluded from the definition of continuous payment authority.

(2) CONC 7.6.14 R does not prevent a firm from making a payment request concerning a sum due where the firm has varied an agreement so that the sum due is less than it was before the variation.
(3) Firms are reminded of their record-keeping obligations under § SYSC 9.1.1 R and § SYSC 9.1.1AR (general rules on record-keeping) which in particular require sufficient records to be kept to ascertain that the firm has complied with all obligations with respect to customers. These should include, for example, arranging to keep records of payment requests (including refusals of payment requests) made under continuous payment authorities and to keep suitable written or other records of the consents referred to in § CONC 7.6.1 R, § CONC 7.6.12 R, § CONC 7.6.13 R and § CONC 7.6.14 R.

7.6.15A

(1) Paragraph (2) applies where a guarantor has provided a guarantee or an indemnity (or both) in respect of high-cost short-term credit. (See § CONC 7.1.4R for the meanings of “guarantor” and “guarantee”.)

(2) § CONC 7.6.12R and § CONC 7.6.13R apply to a continuous payment authority granted by the borrower and to a continuous payment authority granted by a guarantor separately. This means that the firm may make up to two requests for payment under a continuous payment authority granted by the borrower and, if those requests are unsuccessful, up to two requests for payment under a continuous payment authority granted by the guarantor.

Cancelling a continuous payment authority

A firm must not by any means improperly or unfairly inhibit or discourage a customer from cancelling a continuous payment authority including by:

(1) misleading the customer, expressly or by omission, regarding the right to cancel and how it may be exercised; or

(2) failing to respond promptly to requests by or on behalf of the customer to amend or cancel the continuous payment authority; or

(3) intimidating a customer who wishes to cancel the continuous payment authority; or

(4) requiring customers who wish to cancel the continuous payment authority to go through an unduly complicated process.

[Note: paragraph 3.9miv of DCG]

7.6.17

A firm must cease to exercise its rights under the continuous payment authority once it is notified that the continuous payment authority has been cancelled.

[Note: paragraph 3.9miv of DCG]
7.7 Application of interest and charges

7.7.1 When levying charges for debt recovery on customers in default or arrears difficulties firms should consider their obligation under Principle 6 to pay due regard to the interests of customers and treat them fairly.

[Note: paragraphs 3.1 and 3.10 of DCG]

7.7.2 A firm must not claim the costs of recovering a debt from a customer if it has no contractual right to claim such costs.

[Note: paragraph 3.11b of DCG]

7.7.3 A firm must not cause a customer to believe that the customer is legally liable to pay the costs of recovery where no such obligation exists.

[Note: paragraph 3.11a of DCG]

7.7.4 Where a firm has a contractual right to levy default charges, a regulated credit agreement must state the charges and the conditions for making the charge under, as the case may be, the Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014) or the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553).

[Note: paragraphs 3.11c of DCG and 7.15 of ILG]

7.7.5 A firm must not impose charges on customers in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the firm.

[Note: paragraphs 3.11 of DCG and 7.15 of ILG]
7.8 Jurisdictional requirements

7.8.1 A firm dealing with a customer who is resident in a different jurisdiction to the jurisdiction of the firm’s place of business must ensure that it takes appropriate account of any differences in law and court procedure that may have a significant impact on the customer’s rights.

[Note: paragraph 2.3 of DCG]

7.8.2 CONC 7.8.1 R will apply, for example, where a firm’s place of business is in England and the customer resides in Scotland.

[Note: paragraph 2.3 of DCG]

7.8.3 A firm must not commence proceedings or threaten to commence proceedings in the wrong jurisdiction.

[Note: paragraph 3.5g of DCG]
7.9 Contact with customers

Contacting customers

7.9.1 A firm must ensure that a person contacting a customer on its behalf explains to the customer the following matters:

(1) who the person contacting the customer works for;

(2) the person's role in or relationship with the firm; and

(3) the purpose of the contact.

[Note: paragraph 3.3c of DCG]

7.9.2 A firm must not in a communication with the customer make a statement which may induce the customer to contact the firm misunderstanding the reason for making contact.

[Note: paragraph 3.3d of DCG]

7.9.3 (1) An example of a misleading communication in CONC 7.9.2 R is a calling card left at the customer's address which states or implies that the customer has missed a delivery and encourages the customer to make contact.

[Note: paragraph 3.3d (box) of DCG]

(2) The clear fair and not misleading rule in CONC 3.3.1 R also applies to a firm in relation to a communication with a customer in relation to credit agreement or a consumer hire agreement.

7.9.4 A firm must not contact customers at unreasonable times and must pay due regard to the reasonable requests of customers (for example, customers who work in a shift pattern) in respect of when, where and how they may be contacted.

[Note: paragraphs 3.3j and k of DCG]

7.9.5 A firm must not require a customer to make contact on a premium rate or other special rate telephone number the charge for which is higher than to a standard geographic telephone number.

[Note: paragraph 3.3l of DCG]
Firms should note the effect of the *call charges rule* in GEN 7.

**Communication with third parties**

A *firm* must not unfairly disclose or threaten to disclose information relating to the customer’s debt to a third party.

[Note: paragraph 3.7p of DCG]

When contacting a customer:

1. A *firm* must ensure that it does not act in a way likely to be publicly embarrassing to the customer; and

2. A *firm* must take reasonable steps to ensure that third parties do not become aware that the customer is being pursued in respect of a debt.

[Note: paragraph 3.7q of DCG].

The reasonable steps required by CONC 7.9.7 R may, for example, require a *firm* to ensure that:

1. Post sent by the *firm* is properly addressed to the customer and marked “private and confidential” or an expression to the same effect;

2. Where the *firm* has a name which indicates its debt collection activities, its name is not shown so that third parties may see the name on the *firm’s* communications.

CONC 7.9.7 R would not preclude a *firm* sending a statutory notice to a customer’s last known address, where it takes reasonable steps including those referred to in CONC 7.9.8 G.

A *firm* must not disclose details of a debt to an individual without first establishing, by suitably appropriate means, that the individual is (or acts on behalf of) the borrower or hirer under the relevant agreement.

[Note: paragraph 3.9b of DCG]

A *firm* which:

1. Threatens debt recovery action against the “occupier” of particular premises; or

2. Sends a payment demand to all persons sharing the same name and date of birth or address as the customer;

is likely to contravene CONC 7.9.10 R.

[Note: paragraphs 3.9a (box) and 3.9b (box) of DCG]
Debt collection visits

7.9.12 R

Unless it is not practicable to do so, a firm must ensure that a person visiting a customer on its behalf:

(1) clearly explains to the customer the purpose and intended outcome of the proposed visit; and

[Note: paragraph 3.12 of DCG]

(2) gives the customer adequate notice of the date and likely time (at a reasonable time of day) of the visit.

[Note: paragraph 3.13g of DCG]

7.9.13 G

Failure to explain the purpose and intended outcome of a proposed initial visit to the customer or to give adequate notice prior to a proposed initial visit to the customer may not contravene CONC 7.9.12 R, provided that the customer is happy to speak to the person pursuing recovery of the debt at that time. However, where, at the initial visit the customer indicates a preference to use the first visit to agree a more convenient time for a future visit, the person pursuing recovery of the debt should respect the customer’s wishes. It is important that the customer is given reasonable time to prepare for a visit and should not be coerced or pressurised into immediate discussions or decisions.

[Note: paragraph 3.13g (box) of DCG]

7.9.14 R

A firm must ensure that all persons visiting a customer’s property on its behalf act at all times in accordance with the requirements of CONC 7 and do not:

(1) act in a threatening manner towards a customer;

(2) visit a customer at a time when they know or suspect that the customer is, or may be, particularly vulnerable;

(3) visit at an inappropriate location unless the customer has expressly consented to the visit;

(4) enter a customer’s property without the customer’s consent or an appropriate court order;

(5) refuse to leave a customer’s property when it becomes apparent that the customer is unduly distressed or might not have the mental capacity to make an informed repayment decision or to engage in the debt recovery process;

(6) refuse to leave a customer’s property when reasonably asked to do so;

(7) visit or threaten to visit a customer without the customer’s prior agreement when a debt is deadlocked or reasonably queried or
disputed (see CONC 7.14 (Settlements, disputed and deadlocked debt)).

[Note: paragraphs 3.12 and 3.13 of DCG]

7.9.15 G It would normally be inappropriate to visit a customer at the customer place of work or at a hospital where the customer is a patient.
7.10 Treatment of customers with mental capacity limitations

7.10.1 A firm must suspend the pursuit of recovery of a debt from a customer when:

(1) the firm has been notified that the customer might not have the mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time; or

(2) the firm understands or ought reasonably to be aware that the customer lacks mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time.

[Note: paragraphs 3.7r of DCG and 7.13 of ILG]

7.10.2 A firm should allow a customer or a person acting on behalf of the customer a reasonable period of time to provide evidence as to the likely impact of any mental capacity limitation on the customer's ability to engage with the firm.

[Note: paragraph 3.7r (box) of DCG]

7.10.3 CONC 7.10.1 R does not prevent a firm from pursuing the debt through a responsible third party acting on behalf of the customer, where the customer has given prior consent, for example, pursuant to a registered lasting power of attorney.

[Note: paragraph 3.7r (box) of DCG]

7.10.4 Firms should note CONC 7.2.1 R (and its accompanying guidance) which requires firms to establish and implement policies and procedures for the fair and appropriate treatment of particularly vulnerable customers.
7.11 Disclosures relating to “authority” or “status”

7.11.1 R When contacting customers, a firm must not misrepresent its authority or its legal position with regards to the debt or debt recovery process.

[Note: paragraph 3.4 of DCG ]

7.11.2 G For example, a person misrepresents authority or the legal position if they claim to work on instructions from the courts as bailiffs or, in Scotland, sheriff officers or messengers-at-arms, or in Northern Ireland, to work on instructions from the Enforcement of Judgements Office when this is untrue.

[Note: paragraph 3.5a of DCG ]

7.11.3 R A firm must not use official looking documents which are designed to, or are likely to, mislead a customer as to the status of the firm.

[Note: paragraph 3.3a of DCG ]

7.11.4 R A firm must not falsely suggest or state that it is a member of a trade body or is accredited by a trade body.

[Note: paragraph 3.5c (box) of DCG ]

7.11.5 G It is an offence under section 17 of the Legal Services Act 2007 to falsely imply that a person is entitled to carry on a reserved legal activity, for example, to conduct litigation or to appear before and address a court, or to take or use any relevant name, title or description, for example, “solicitor”.

[Note: paragraph 3.5c (box) of DCG ]

7.11.6 R A firm must not suggest or state that action can or will be taken when legally it cannot be taken.

[Note: paragraph 3.5b of DCG ]

7.11.7 G Examples of where a firm is likely to contravene CONC 7.11.6 R include where a firm or a person acting on its behalf:
(1) states or implies that bankruptcy or sequestration proceedings may be initiated when the balance of the outstanding debt is too low to qualify for such proceedings;

(2) states or implies that steps will be taken to enforce a debt where the customer is making payments under a Debt Payment Programme Agreement agreed under the Debt Arrangement and Attachment (Scotland) Act 2002;

(3) claims a right of entry will be exercised when no court order to this effect has been granted; or

(4) states that goods will be repossessed when they are “protected goods” (as defined under section 90(7) of the CCA) and no specific authorisation to repossess the goods has been granted by a court.

[Note: paragraph 3.5b (box) of DCG]

7.11.8 A firm must not suggest or state that it will commence proceedings for a warrant of execution or an attachment of earnings order when a court judgment has not been obtained, or that it will take any other enforcement action before it is possible to know whether such action will be permissible.

[Note: paragraph 3.5c of DCG]

7.11.9 A firm must not suggest or state that an action has been taken when no such action has been taken.

[Note: paragraph 3.5d (box) of DCG]
7.12 Lenders’ responsibilities in relation to debt

Application

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

Unfair business practices

A firm must not:

1. refuse to deal with a not-for-profit debt advice body, debt counsellor, debt adjuster or with another person acting on behalf of a customer, unless there is an objectively justifiable reason for doing so;

   [Note: paragraphs 3.9c of DCG and 3.48 of DMG]

2. unless the credit agreement requires payments to be made to a third party, refuse to accept a payment tendered to the firm by the customer or by a person acting on behalf of the customer;

   [Note: paragraphs 3.8 of DCG and 3.49a of DMG]

3. refuse to deal with a customer who is developing a repayment plan, a third party who is assisting a customer to develop a repayment plan or a third party who is developing a debt management plan for the customer’s debts, unless there is an objectively justifiable reason for doing so;

   [Note: paragraphs 3.9c of DCG and 3.49b of DMG]

4. where a person is acting on behalf of a customer, directly contact the customer without the customer’s consent, unless there is an objectively justifiable reason for doing so;

   [Note: paragraph 3.9d of DCG]

5. operate a policy:

   a. of only negotiating the freezing of interest and charges on a customer’s debts where the lender has an existing arrangement with a person acting on behalf of the customer; or

      [Note: paragraph 3.49e of DMG]

   b. of refusing to negotiate with certain third parties or with a customer developing their own repayment plan; or
(6) return or refuse a repayment or refuse to credit a repayment to a customer's account merely because the repayment is tendered by a debt management firm.

[Note: paragraph 3.49c (box) of DMG]

(1) [Note: paragraph 3.49a of DCG]

(2) Situations where it may be justified for a firm to refuse to deal with a person acting on behalf of a customer may include, for example, refusing to deal with that person where the firm is able to show that the person has failed to comply with consumer protection legislation or with FCA rules.

[Note: paragraph 3.48 of DMG]

(3) It may be justified for a firm to contact a customer directly where:

(a) repeated unsuccessful efforts have been made to contact a person acting on behalf of the customer; or

[Note: paragraphs 3.9d of DCG and 3.49c (box) of DMG]

(b) the firm reasonably believes the person acting on behalf of the customer is acting against the best interests of the customer.

(4) Situations where it would be justified for a firm to contact a customer directly include, for example:

(a) sending a statutory notice, taking the reasonable steps required by [Note: CONC 7.9.7 R]; or

(b) where the sole purpose of the contact is to signpost the customer to not-for-profit debt advice bodies.

(5) Where a firm is in dispute with a person acting on behalf of the customer it should make its position known to that person and to the customer as soon as practicable.

[Note: paragraph 3.49d of DMG]

(6) The FCA does not believe it is justified to bypass contacting a person acting on behalf of a customer merely because that person has not agreed to comply with the Insolvency Service's Debt Management Protocol.
Data accuracy

7.13.1 The obtaining, recording, holding and passing on of information about individuals for the purposes of tracing a customer and/or recovering a debt due under a credit agreement or a consumer hire agreement or a P2P agreement will involve the processing of personal data. Accordingly, firms processing such data are data controllers or data processors and are obliged to comply with data protection legislation and, in particular, to adhere to the data protection principles.

[Note: paragraph 3.16 of DCG]

7.13.2 A firm must take reasonable steps to ensure that it maintains accurate and adequate data (including in respect of debt and repayment history) so as to avoid the risk that:

(1) an individual who is not the true borrower or hirer is pursued for the repayment of a debt; and

(2) the borrower or hirer is pursued for an incorrect amount.

[Note: paragraphs 3.19 of DCG and 7.11 (box) of ILG]

7.13.3 A firm must endeavour to ensure that the information it passes on to its agent or to a debt collector or to a tracing agent (a person that carries on the activity in article 54 of the Exemption Order), whether for the firm’s or another person’s business, or to any other person involved in recovering the debt or, where appropriate, to a credit reference agency is accurate and adequate so as to facilitate the tracing and identification of the true borrower or hirer.

[Note: paragraphs 3.20 of DCG and 7.11 (box) ILG]

7.13.4 Before pursuing a customer for the repayment of a debt, a firm must take reasonable steps to verify the accuracy and adequacy of the available data so as to ensure that the true customer is pursued for the debt and that they are pursued for the correct amount.

[Note: paragraphs 3.7e and 3.23a of DCG]
A firm should ensure (subject to any legal requirements) that adequate and accurate information it holds about a customer in relation to a debt is made available to persons involved on its behalf in the debt recovery process. Information relating to the customer which should be made available to agents or employees includes, for example:

1. being in financial difficulties;
2. being particularly vulnerable;
3. disputing the debt;
4. a repayment plan or forbearance being in place;
5. having a representative acting on the customer’s behalf.

[Note: paragraph 3.23b (box) of DCG]

A firm should not impose limitations on the number or the extent of reasonable applications that can be made to it for documents or other relevant information pertaining to a customer in respect of which it is, or has been, the lender or owner, by a firm seeking such information to facilitate its pursuance of the relevant debt.

[Note: paragraph 3.23i of DCG]

Where a firm has established that an individual being pursued for a debt is not the true borrower or hirer under the credit agreement, regulated credit agreement, consumer hire agreement or regulated consumer hire agreement or that the debt has been paid, the firm must update its records and the data supplied to the credit reference agencies (where applicable).

[Note: paragraph 3.23f of DCG]

Outsourcing

A firm seeking to instruct a third party to pursue the recovery of debts or to trace customers on its behalf should exercise due care in selecting the third party.

[Note: paragraph 2.5 of DCG]

A firm should take reasonable steps to seek to ensure that, where it has engaged a third party to recover debts on its behalf, the customer is not subject to multiple approaches by different persons, resulting in repetitive or frequent contact with the customer by different parties.

[Note: paragraph 3.7c of DCG]
7.13.11 Where a **firm** has engaged a third party to recover debts or to trace **customers** on its behalf, it should properly investigate complaints about the third party.

*[Note: paragraph 2.5 of DCG]*

7.13.12 **CONC 1.2.2 R** requires a **firm** to ensure its employees and agents comply with **CONC** and that it takes reasonable steps to ensure other **persons** who act on its behalf do so.

7.13.13 A **firm** must ensure that a third party engaged by it, where required, has the appropriate **Part 4A permission** to engage in the **regulated activities** undertaken in the course of the third party’s business.

*[Note: paragraph 2.6 of DCG]*
7.14 Settlements, disputed and deadlocked debt

Disputed debt

7.14.1 A firm must suspend any steps it takes or its agent takes in the recovery of a debt from a customer where the customer disputes the debt on valid grounds or what may be valid grounds.

[Note: paragraph 3.9k of DCG]

(2) Paragraph (1) does not apply where a customer under a green deal consumer credit agreement (within the meaning of section 189B of the CCA) alleges that the disclosure and acknowledgement provisions in Part 7 of the Green Deal Framework (Disclosure, Acknowledgement, Redress etc) Regulations 2012 (SI 2012/2079) have been breached, but the lender reasonably believes this not to be the case.

7.14.2 Valid grounds for disputing a debt include that:

(1) the individual being pursued for the debt is not the true borrower or hirer under the agreement in question; or

(2) the debt does not exist; or

(3) the amount of the debt being pursued is incorrect.

[Note: annex A3 of DCG]

7.14.3 Where a customer disputes a debt on valid grounds or what may be valid grounds, the firm must investigate the dispute and provide details of the debt to the customer in a timely manner.

[Note: paragraph 3.9i of DCG]

7.14.4 Where there is a dispute as to the identity of the borrower or hirer or as to the amount of the debt, it is for the firm (and not the customer) to establish, as the case may be, that the customer is the correct person in relation to the debt or that the amount is the correct amount owed under the agreement.

[Note: paragraphs 3.9j of DCG and 7.11 (box) of ILG]
A firm must provide a customer with information on the outcome of its investigations into a debt which the customer disputed on valid grounds.

[Note: paragraph 3.3g of DCG]

Where a customer disputes a debt and the firm seeking to recover the debt is not the lender or the owner, the firm must:

(1) pass the information provided by the customer to the lender or the owner; or

[Note: paragraph 3.23h of DCG]

(2) if the firm has authority from the lender or owner to investigate a dispute, it must notify the lender or owner of the outcome of the investigation.

A debt repayment is deadlocked where the customer (or the customer’s representative) has acknowledged the customer’s liability for a debt and has proposed a repayment plan, but the proposed repayment plan is not acceptable to the firm seeking to recover the debt.

[Note: annex A4 of DCG]

A firm must give due consideration to a reasonable offer of repayment made by the customer or the customer’s representative.

[Note: annex A5 of DCG]

Where a firm rejects a proposal for repayment from a customer in default or in arrears difficulties or from the customer’s representative, the firm’s response must include a clear explanation of the reason for the rejection.

[Note: paragraph 7.16 (box) of ILG]

If a firm rejects a repayment offer because it is unacceptable, the firm must not engage in any conduct intended to, or likely to, have the effect of intimidating the customer into increasing the offer.

[Note: annex A5 of DCG]

Examples of conduct that may contravene CONC 7.14.10 R would, depending on the circumstances, include where following an unacceptable offer a firm immediately:

(1) sends field agents to visit the customer or communicates to the customer that it will do so;

[Note: annex A5 (box) to DCG]
(2) substantially increases the rate of interest or imposes a substantial charge or communicates that it will do either of those things.

7.14.12 G

In considering the customer's repayment offer, a firm should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

[Note: annex A6 of DCG]

7.14.13 G

(1) Merely making a counter-offer to a customer's repayment offer or merely taking steps to enforce an agreement would not contravene CONC 7.14.10 R.

(2) A firm which makes a counter offer to a proposal made by or on behalf of the customer, should allow the customer or the customer's representative, a reasonable period of time to consider and respond to the counter offer.

[Note: paragraph 7.16 of ILG]

7.14.14 R

If a firm accepts a customer's offer to settle a debt, it must communicate formally and unequivocally that the offer accompanied by the relevant payment has been accepted as settlement of the customer's liability.

[Note: paragraph 3.3h of DCG]
7.15 Statute barred debts

7.15.1 A debt is statute barred where the prescribed period within which a claim in relation to the debt may be brought expires. In England, Wales and Northern Ireland, the limitation period is generally six years in relation to debt. In Scotland, the prescriptive period is five years in relation to debt.

[Note: annex B1 of DCG]

7.15.2 In England, Wales and Northern Ireland, a statute barred debt still exists and is recoverable.

[Note: paragraph 3.15a and annex B3 of DCG]

7.15.3 In Scotland, a statute barred debt ceases to exist and is no longer recoverable if:

1. a relevant claim on behalf of the lender or owner has not been made during the relevant limitation period; and

2. the debt has not been acknowledged by, or on behalf of, the customer during the relevant limitation period.

[Note: annex B3 of DCG]

7.15.4 Notwithstanding that a debt may be recoverable, a firm must not attempt to recover a statute barred debt in England, Wales or Northern Ireland if the lender or owner has not been in contact with the customer during the limitation period.

[Note: paragraph 3.15b of DCG]

7.15.5 If the lender or owner has been in regular contact with the customer during the limitation period, the firm may continue to attempt to recover the debt.

[Note: paragraph 3.15b of DCG]

7.15.6 A firm must endeavour to ensure that it does not mislead a customer as to the customer's rights and obligations.

[Note: paragraph 3.15b of DCG]
It is misleading for a firm to suggest or state that a customer may be the subject of court action for the sum of the statute barred debt when the firm knows, or reasonably ought to know, that the relevant limitation period has expired.

[Note: paragraph 3.15b of DCG]

A firm must not continue to demand payment from a customer after the customer has stated that he will not be paying the debt because it is statute barred.

[Note: paragraph 3.15b of DCG]

A firm must identify for prospective purchasers of debts arising under credit agreements or consumer hire agreements or P2P agreements those debts which it knows or ought reasonably to know are statute barred, so as to avoid a firm taking inappropriate action against customers in relation to such debts.

[Note: paragraph 3.23c of DCG]

Complaints to the Financial Ombudsman Service and initiating legal proceedings

A lender must not initiate legal proceedings in relation to a regulated credit agreement where the lender is aware that the customer has submitted a valid complaint or what appears to the firm may be a valid complaint relating to the agreement in question that is being considered by the Financial Ombudsman Service.

[Note: paragraph 7.9 (box) of ILG]
7.16 Passing data to lead generators etc.

7.16.1 A firm must not pass on a customer’s details to third parties, including lead generators, debt management firms, lenders, owners, debt collectors or credit brokers, unless it is appropriate to do so.

[Note: paragraph 3.9e of DCG]

7.16.2 [deleted]
7.17 Notice of sums in arrears under P2P agreements for fixed-sum credit

[Note: Until the end of 30 September 2014, transitional provisions apply to CONC 7.17: see CONC TP 4.3]

Application

7.17.1 This section applies to a firm with respect to operating an electronic system in relation to lending in relation to a borrower under a P2P agreement for fixed-sum credit.

7.17.2

(1) Subject to (2), this section does not apply where the P2P agreement provides for credit of less than £50.

(2) Paragraph (1) does not apply where two or more P2P agreements in relation to the same borrower (whether or not with the same lender) are entered into at or about the same time.

(3) Where (2) applies, the firm’s obligations in CONC 7.17 apply as if all of the P2P agreements made with a borrower at or about the same time were a single agreement.

Notice of sums in arrears for fixed-sum credit

7.17.3 A firm must comply with this section where the following conditions are satisfied:

(1) a borrower is required to have made at least two payments under the agreement before that time;

(2) the total sum paid under the agreement by the borrower is less than the total sum required to have been paid before that time;

(3) the amount of the shortfall is no less than the sum of the last two payments which the borrower is required to have made before that time;

(4) the firm is not already under a duty to give the borrower notices under CONC 7.17.4 R in relation to the agreement;

(5) the lender is not already under a duty to give the borrower notice under section 86B of the CCA; and
(6) if a judgment has been given in relation to the agreement before that time, there is no sum still to be paid under the judgment by the borrower.

7.17.4

(1) The firm must, within the period of 14 days beginning with the day on which the conditions in CONC 7.17.3 R are satisfied, give the borrower a notice including the information set out in CONC 7.17.7 R and CONC 7.17.8 R.

(2) After giving that notice, the firm must give the borrower further notices including the information in CONC 7.17.7 R and CONC 7.17.8 R at intervals of not more than six months.

7.17.5

(1) The duty of the firm to give the borrower notices under CONC 7.17.4 R will cease when either of the conditions mentioned in (2) is satisfied but, if either of those conditions is satisfied before the notice required by CONC 7.17.4 R (1) is given, the duty will not cease until that notice is given.

(2) The conditions referred to in (1) are:
   (a) that the borrower ceases to be in arrears;
   (b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the borrower.

(3) For the purposes of (2)(a) the borrower ceases to be in arrears when:
   (a) no payments, which the borrower has ever failed to make under the agreement when required, are still owing;
   (b) no default sum, which has ever become payable under the agreement in connection with the borrower’s failure to pay any sum under the agreement when required, is still owing;
   (c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and
   (d) no other sum of interest, which has ever become payable under the agreement in connection with the borrower’s failure to pay any sum under the agreement when required, is still owing.

(4) A firm must accompany the notice required by CONC 7.17.4 R with a copy of the current arrears information sheet under section 86A of the CCA with the following modifications:
   (-a) for the heading “Arrears” substitute “Arrears – peer-to-peer 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 bullet point headed “Contact the organisations you owe money to” substitute:
“Contact the peer-to-peer (P2P) platform which arranged your loan. Let them know you are having problems. They may be able to discuss options for paying back what you owe.”;

(c) For the paragraph headed “Doing nothing could make things worse.” substitute:

“Doing nothing could make things worse.

You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase.”.

(5) The firm must not charge the borrower a fee in connection with preparation of or the giving of the notice required by CONC 7.18.4 R.

7.17.6 In this section “payments” means payments to be made at predetermined intervals provided for under the terms of the agreement.

Content of arrears notices: fixed-sum credit

7.17.7 The notice required by CONC 7.17.4 R must contain the following information:

(1) a form of wording to the effect that the notice is given in compliance with the rules because the borrower is behind with the sums payable under the agreement;

(2) a form of wording encouraging the borrower to discuss the state of his account with the firm;

(3) the date of the notice;

(4) (a) the name, telephone number or numbers, the postal address, and, where appropriate, any other address of the firm; or

(b) where the firm and the borrower have entered into an arrangement under which the borrower has been given details of a particular employee or category of employee of the firm whom the borrower is entitled to contact for all the borrower’s dealings with the firm, the firm may, instead of including the telephone number or numbers in (a), refer to that arrangement;

(5) a description sufficient to identify any agreements and the opening balance under any agreements at the date on which the duty to give the notice arose;

(6) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:

*Default sums and interest
You may have to pay default sums and interest in relation to the missed or partly made payments referred to in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice.

(b) in any other case, a statement in the following form:

"Default sums and interest
You will not incur any default sums or extra interest in relation to the missed or partly made payments referred to in this notice. This notice does not take account of any payments received after the date of the notice."

(7) a statement in the following form:

"Notices
For so long as you continue to be behind with your payments by any amount, you will be sent notices about this at least every six months. We are not required to send you notices more frequently than this, even if you get further behind with your payments in between notices.

(8) a statement in the following form:

"Financial Conduct Authority Information Sheet
This notice should include a copy of the current arrears information sheet prepared by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example to think carefully before borrowing money to repay debts as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Financial Conduct Authority information sheet for more information about how to get advice on dealing with your debt.".

Content of first required arrears notices

Where the notice is given under CONC 7.17.4R (1) the notice must also state the amount of the shortfall under the agreement which gave rise to the duty to give the notice and the firm must:

(1) within 15 working days of receiving the borrower’s request for further information about the shortfall which gave rise to the duty to give the notice, give the borrower in relation to each of the sums which comprise the shortfall, notice of:

(a) the amount of the sums due which comprise the shortfall;
(b) the date on which the sums became due; and
(c) the amounts the borrower has paid in respect of the sums due and the dates of those payments;

(2) except where the original notice contained all the information specified in (1), include a statement in the following form

"If you want more information about which payments you failed to make please get in touch with us. We are required to give you this..."
information within fifteen working days of receiving your request for it.; and

(3) where the firm and the borrower have entered into an agreement to aggregate, the references to sums due and to amounts paid in (1) may be construed as a reference to the aggregated sums due to the firm (on behalf of the lender) and the aggregated amounts paid by the borrower in accordance with the terms of that agreement.

Content of required arrears notices except first required notices

Where the notice is given under CONC 7.17.4R (2) the notice must also contain the following information:

(1) that part of the opening balance referred to in CONC 7.17.7R (5) which comprises any sum which the borrower has failed to pay in full when it became due under the agreement, whether or not such sums have been included in a previous notice;

(2) the amount and date of any sums paid into the account by, or to the credit of, the borrower during the period to which the notice relates;

(3) the amount and date of any interest or other charges payable by the borrower which became due during the period to which the notice relates, whether or not the interest or other charges relate only to that period. But where the rate or rates of interest provided for under the agreement are not applicable on a per annum basis, this sub-paragraph does not require amounts and dates of interest which became due during the period to which the notice relates to be set out separately in the notice;

(4) the amount and date of any movement in the account during the period to which the notice relates which is not required to be included in the notice under (2) and (3);

(5) the balance under the agreement at the end of the period to which the notice relates;

(6) that part of the balance referred to in (5) which comprises any sum which the borrower has failed to pay in full when it became due under the agreement and which remains unpaid at the end of the period to which the notice relates, whether or not such a sum has been included in a previous notice; and

(7) add the following words to the end of the first sentence of the statement in CONC 7.17.7R (6)(a): "(in addition to any default sums and interest included in this notice)."

Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the firm must include wording explaining why it is not such a demand.
The reference to the account in CONC 7.17.9R (2) and CONC 7.17.9R (4) are to be construed as a reference to all accounts maintained by the *firm* (on behalf of a *lender*) which relate to the agreement with the *borrower*.
7.18 Notice of sums in arrears under P2P agreements for running-account credit

[Note: Until the end of 30 September 2014, transitional provisions apply to CONC 7.18: see CONC TP 4.4]

Application

7.18.1 This section applies to a firm with respect to operating an electronic system in relation to lending in relation to a borrower under a P2P agreement for running account credit.

Notice of sums in arrears for running account credit

7.18.2 A firm must comply with this section where the following conditions are satisfied:

(1) a borrower is required to have made at least two repayments under the agreement;

(2) the last two repayments which the borrower is required to have made before that time have not been made;

(3) the firm has not already been required to give a notice under CONC 7.18.3 R in relation to the agreement;

(4) the lender is not already under a duty to give the borrower notice under section 86C of the CCA; and

(5) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the borrower.

7.18.3 (1) The firm must, when the firm next sends a statement to the borrower, give or send the borrower a notice including the information set out in CONC 7.18.5 R.

(2) A firm must accompany the notice required by (1) with a copy of the current arrears information sheet under section 86A of the CCA with the following modifications:

(-a) for the heading “Arrears” substitute “Arrears – peer-to-peer lending”;
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(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 bullet point headed “Contact the organisations you owe money to” substitute:

“Contact the peer-to-peer (P2P) platform which arranged your loan. Let them know you are having problems. They may be able to discuss options for paying back what you owe.”

(c) For the paragraph headed “Doing nothing could make things worse.” substitute:

“Doing nothing could make things worse.
You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase.”.

(3) The firm must not charge the borrower a fee in connection with the preparation of or the giving of the notice required by (1).

(4) The notice required by (1) may be incorporated in a statement or other notice which the firm gives to the borrower in relation to the agreement by virtue of FCA rules or the CCA.

Content of arrears notices: running account credit

The notice referred to in CONC 7.18.3 R must contain the following information:

(1) a form of wording to the effect that it is given in compliance with the rules because the borrower is behind with his payments under the agreement;

(2) a form of wording encouraging the borrower to discuss the state of his account with the firm;

(3) the date of the notice;

(4) a description of the agreement sufficient to identify it;

(5) (a) the name, telephone number, postal address and, where appropriate, any other address of the firm; or

(b) where the firm and the borrower have entered into an arrangement under which the firm has given the borrower details of a particular employee or category of employee of the firm whom the borrower is entitled to contact for all his dealings with
the firm, the firm may, instead of including the telephone number or numbers referred to in (a), refer to that arrangement;

(6) in relation to each of the last two payments which the borrower is required under the agreement to have made and which have not been paid or not fully paid:

(a) the amount payable;
(b) the date on which that amount became due;
(c) in the event that the borrower has paid part of that amount, the amount the borrower has paid and the date on which that payment was made;
(d) the nature of the amount due; and
(e) the aggregate of the amounts payable as shown under (a), less the aggregate of the amounts paid as shown under (c);

(7) a statement in the following form:

"Missed and partly made payments
This notice does not give details of missed or partly made payments previously notified whether or not they remain unpaid."

(8) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:

"Default sums and Interest
You may have to pay default sums and interest in relation to the missed or partly made payments indicated above in addition to any default sums and interest already included in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice."

(b) in any other case, a statement in the following form:

"Default sums and Interest
You will not incur any default sums or extra interest in relation to the missed or partly made payments indicated above. This notice does not take account of any payments received after the date of the notice."

(9) a statement in the following form:

"Financial Conduct Authority Information Sheet
This notice should include a copy of the current arrears information sheet issued by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example, to think carefully before borrowing money to repay debts, as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the
Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the firm must include wording explaining why it is not such a demand.

(1) Subject to (2), where the total amount which the borrower has failed to pay in relation to the last two payments due under the agreement prior to the date on which the firm came under a duty to give the borrower a notice under CONC 7.18.3 is not more than £2, the notice:

(a) need not include any of the information or statements referred to in CONC 7.18.4;

(b) but, in that event, shall contain a statement in the following form:

*You have failed to make two minimum payments

Failing to make minimum payments can mean that you have broken the terms of this credit agreement. This could result in your having to pay additional costs. A copy of the Financial Conduct Authority Arrears information sheet is enclosed, which contains more information about what to do when you get behind with your payments.*;

(2) Paragraph (1) does not apply where at the date on which the duty to give notice arose a default sum or other charge has become payable as a result of the borrower's failure to pay sums as set out in (1).
7.19 Notice of default sums under P2P agreements

[Note: Until the end of 30 September 2014, transitional provisions apply to
CONC 7.19: see CONC TP 4.5]

Application

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

7.19.2 (1) Subject to (2), this section does not apply where the P2P agreement provides for credit of less than £50.

(2) Paragraph (1) does not apply where two or more P2P agreements in relation to the same borrower (but whether or not with the same lender) are entered into at or about the same time.

(3) Where (2) applies, the firm’s obligation in CONC 7.19.4 R applies as if all of the P2P agreements made with a borrower at or about the same time were a single agreement.

7.19.3 (1) In this section “default sum” means in relation to the borrower under a P2P agreement, a sum (other than a sum of interest) which is payable by the borrower under the agreement in connection with a breach of the agreement by the borrower.

(2) But a sum is not a default sum in relation to the borrower simply because as a consequence of the breach of the agreement the borrower is required to pay the sum earlier than would otherwise have been the case.

Notice of default sums

7.19.4 Where a default sum becomes payable under a P2P agreement by the borrower, the firm must give notice to the borrower within 35 days of a default sum becoming payable by the borrower.

7.19.5 (1) The notice required by CONC 7.19.4 R must contain:

(1) a form of wording to the effect that it relates to default sums and is given in compliance with FCA rules;
(2) the date of the notice;

(3) a description of the agreement sufficient to identify it;

(4) the firm's name, telephone number, postal address and, where appropriate, any other address;

(5) the amount and nature of each default sum payable under the agreement which has not been the subject of a previous notice of default sums;

(6) the date upon which each default sum referred to in the notice became payable under the agreement;

(7) the following statement:

"This notice does not take account of default sums which we have already told you about in another default sum notice, whether or not those sums remain unpaid."; and

(8) the total amount of all the default sums included in the notice.