

Chapter 7

Arrears, default and recovery (including repossessions)



7.1 Application

Who? What?

7.1.1	R	<p>This chapter applies, unless otherwise stated in or in relation to a <i>rule</i>, to:</p> <ul style="list-style-type: none">(1) a <i>firm</i> with respect to <i>consumer credit lending</i>;(2) a <i>firm</i> with respect to <i>consumer hiring</i>;(3) a <i>firm</i> with respect to <i>operating an electronic system in relation to lending</i>, in relation to a <i>borrower</i> under a <i>P2P agreement</i>;(4) a <i>firm</i> with respect to <i>debt collecting</i>.
7.1.2	G	<p>The following sections provide otherwise for application:</p> <ul style="list-style-type: none">(1) ■ CONC 7.12 (lenders' responsibilities in relation to debt) applies only to <i>firms</i> in respect of <i>consumer credit lending</i> or in respect of activity that would be <i>consumer credit lending</i> but for article 60C(4A) of the <i>Regulated Activities Order</i>;(2) ■ CONC 7.17 to ■ CONC 7.19 apply only to <i>firms operating electronic systems in relation to lending</i> in relation to <i>borrowers</i> under <i>P2P agreements</i> as set out in those sections.
7.1.3	G	<ul style="list-style-type: none">(1) In accordance with ■ CONC 1.2.2 R <i>firms</i> must ensure that their employees and agents comply with CONC and must take reasonable steps to ensure that other <i>persons</i> acting on the <i>firm's</i> behalf act in accordance with CONC.(2) The <i>rule</i> in ■ CONC 1.2.2 R is particularly important in relation to the requirements in ■ CONC 7, for example, in dealing with an <i>individual</i> from whom the <i>person</i> referred to in the <i>rule</i> is seeking to collect a debt.(3) In this chapter the expression “arrears” includes any shortfall in one or more payment due from a <i>customer</i> under an agreement to which the chapter applies.
7.1.3A	R	<p>In this chapter, the expression “<i>regulated credit agreement</i>” includes a <i>credit agreement</i> that is an exempt agreement by virtue of article 60C(4A) of the <i>Regulated Activities Order</i> except for the purposes of the following:</p>

- (1) ■ CONC 7.5.1G;
- (2) ■ CONC 7.6; and
- (3) ■ CONC 7.7.4G.

Agreements where there is a guarantor etc

7.1.4

R

- (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 7.3.1G, ■ 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.
- (4) A reference in this chapter to a *customer* or *borrower* does not include the guarantor under a *credit agreement* that is an exempt agreement by virtue of article 60C(4A) of the *Regulated Activities Order*.

7.1.5

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In relation to ■ CONC 7.1.4R(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 (other than a *credit agreement* that is an exempt agreement by virtue of article 60C(4A) of the *Regulated Activities Order*). (See ■ CONC 7.3.1G(2) and ■ CONC 7.3.1G(3).).