

## Chapter 7

# Arrears, default and recovery (including repossessions)

## 7.1 Application

### Who? What?

- 7.1.1** **R** 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** **G** 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* or in respect of activity that would be *consumer credit lending* but for article 60C(4A) of the *Regulated Activities Order*;
  - (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** **G**
- (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.
- 7.1.3A** **R** In this chapter, the expression "*regulated credit agreement*" includes a *credit agreement* that is an exempt agreement by virtue of article 60C(4A) of the *Regulated Activities Order* except for the purposes of the following:

- (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).)