

## Chapter 7

# Arrears, default and recovery (including repossessions)



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 R 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 R
- (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 R 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

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| 7.17.4 | <b>R</b> | <p>(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 <i>borrower</i>.</p>   |
| 7.17.5 | <b>R</b> | <p>(1) The <i>firm</i> 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 <i>borrower</i> a notice including the information set out in ■ CONC 7.17.7 R and ■ CONC 7.17.8 R.</p> <p>(2) After giving that notice, the <i>firm</i> must give the <i>borrower</i> further notices including the information in ■ CONC 7.17.7 R and ■ CONC 7.17.8 R at intervals of not more than six <i>months</i>.</p>  |
|        |          | <p>(1) The duty of the <i>firm</i> to give the <i>borrower</i> 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 7.17.4R (1) is given, the duty will not cease until that notice is given.</p> <p>(2) The conditions referred to in (1) are:</p> <ul style="list-style-type: none"> <li>(a) that the <i>borrower</i> ceases to be in arrears;</li> <li>(b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the <i>borrower</i>.</li> </ul> <p>(3) For the purposes of (2)(a) the <i>borrower</i> ceases to be in arrears when:</p> <ul style="list-style-type: none"> <li>(a) no payments, which the <i>borrower</i> has ever failed to make under the agreement when required, are still owing;</li> <li>(b) no default sum, which has ever become payable under the agreement in connection with the <i>borrower's</i> failure to pay any sum under the agreement when required, is still owing;</li> <li>(c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and</li> <li>(d) no other sum of interest, which has ever become payable under the agreement in connection with the <i>borrower's</i> failure to pay any sum under the agreement when required, is still owing.</li> </ul> <p>(4) A <i>firm</i> 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:</p> <ul style="list-style-type: none"> <li>(-a) [deleted]</li> <li>(a) for the numbered point headed "Work out how much money you owe" substitute: <ul style="list-style-type: none"> <li>"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.";</li> </ul> </li> <li>(b) for the numbered point headed "Contact the organisations you owe money to" substitute:</li> </ul> |

- “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.”;
- (ba) For the bullet point headed “If you live in England and Wales, you may be entitled to ‘breathing space’” substitute:
- “You may be entitled to ‘breathing space’ – a defined period where you have protections from legal action taken against you. Speak to a debt adviser who can set out your options.”;
- (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 R 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 R 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."; or

- (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."; and

- (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

7.17.8

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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;

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- (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)."

- 7.17.10 **R** 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.
- 7.17.11 **R** 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*.