

Chapter 7

Arrears, default and recovery (including repossessions)



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 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 running account credit.

Notice of sums in arrears for running account credit

7.18.2 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 *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 R

- (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”;

- (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*.

7.18.4 **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: running account credit

7.18.5 **R** 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."; 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 indicated above. This notice does not take account of any payments received after the date of the notice."; and
- (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 Financial Conduct Authority information sheet for more information about how to get advice on dealing with your debt."

7.18.6 **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.

7.18.7 **R** (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 R** is not more than £2, the notice:

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

(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).