

Chapter 7

Arrears, default and recovery (including repossessions)

7.6 Exercise of continuous payment authority

Recovery and continuous payment authorities etc.

7.6.1

R

- (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

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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 4.6.2 R; 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 7.6.1R (2);
- (3) other than where ■ CONC 7.6.14R (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 7.6.1R (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 7.6.1R (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 7.6.1R (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]

7.6.2A

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- (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

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- (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, section 82(2) of the CCA requires it to be documented as a modifying agreement and ■ CONC 4.6.3R applies instead of ■ CONC 7.6.2AR. *Firms* should note the possibility that a *P2P agreement* may be a *regulated credit agreement*.

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]

- 7.6.6** **G** 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]
- 7.6.7** **R** 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]
- 7.6.8** **G**
- (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*.
- 7.6.9** **G** 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]
- 7.6.10** **G** 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 G**) 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]

7.6.11 **G** 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

7.6.12 **R**

- (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

7.6.13

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- (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]

7.6.14

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- (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.

7.6.15

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- (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 G

- (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

7.6.16 R

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 R

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]