

## PERSONAL CURRENT ACCOUNTS AND OVERDRAFTS INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137C (FCA general rules: cost of credit and duration of credit agreements);
  - (3) section 137R (Financial promotion rules);
  - (4) section 137T (General supplementary powers); and
  - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on:
- (1) 18 December 2019 for Part 1 of Annex A and Part 1 of Annex B; and
  - (2) 6 April 2020 for Part 2 of Annex A and Part 2 of Annex B.

### Amendments to the Handbook

- D. The Banking: Conduct of Business sourcebook (BCOBS) is amended in accordance with Annex A to this instrument.
- E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex B to this instrument.

### Notes

- F. In Annex B to this instrument, the notes (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

### Citation

- G. This instrument may be cited as the Personal Current Accounts and Overdrafts Instrument 2019.

By order of the Board  
30 May 2019

## Annex A

### Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Part 1: Comes into force on 18 December 2019

#### 4 Information to be communicated to banking customers

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#### 4.4 Further information to be provided about personal current accounts

...

Method and timing of communication

##### 4.4.9 G ...

- (2) Where the *firm's* website or mobile application constitutes or includes a *direct offer financial promotion* in relation to the personal current account, the information required by *BCOBS 4.4.3R(1)* and (2) should have been included in this material in accordance with ~~*BCOBS 2.2A*~~ *BCOBS 2.2B*. If that material is published in such a way that a potential *banking customer* will view it before they commence their application, the *firm* need not communicate it again.

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Information about overdrafts to be made generally available

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- 4.4.13 G Where the *firm* is subject to *BCOBS 8.2* (Cost calculator) or ~~*BCOBS 8.4*~~ *BCOBS 8.3* (Eligibility calculator) it will be required to make these tools available, or publish a reference to their availability, alongside the information required to be published under *BCOBS 4.4.12R* (see *BCOBS 8.2.3R* and *BCOBS 8.3.3R*).

#### Part 2: Comes into force on 6 April 2020

## 8 Tools for personal current account customers

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### 8.4 Alerts

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#### Automatic enrolment

8.4.3 R (1) Except as otherwise provided for in *BCOBS* 8.4.5R, a *firm* must ensure that in relation to each personal current account held by a *banking customer*, the *banking customer* is, by the date specified in (2), enrolled to receive:

...

(b) unarranged overdraft alerts in accordance with *BCOBS* 8.4.13R; and

(c) attempt to overdraw without prior arrangement alerts in accordance with *BCOBS* 8.4.15R; and

(d) ~~where *BCOBS* 8.4.16R applies, the additional alerts required under that rule.~~ [deleted]

...

...

#### Customising alerts

8.4.10 R (1) A *firm* must put in place arrangements that allow a *banking customer* to choose not to receive the alerts required by *BCOBS* 8.4.12R; and *BCOBS* 8.4.13R and ~~*BCOBS* 8.4.16R.~~

...

8.4.11 G ...

(2) The effect of *BCOBS* 8.4.10R(1) and (2) is that a *firm*:

(a) need not allow a *banking customer* to opt out of receiving attempt to overdraw without prior arrangement alerts; and

(b) may offer a combined opt out for attempt to overdraw without prior arrangement alerts and unarranged overdraft alerts, and not offer an independent opt out for each of these alerts.

A *banking customer* should be able to opt out of arranged overdraft alerts, ~~or any additional alerts required under BCOBS 8.4.16R,~~ regardless of the other alerts the banking customer chooses to receive.

...

...

~~Additional alerts where there are multiple arranged overdraft limits~~

- 8.4.16 R (1) ~~This rule applies to a firm in relation to an authorised non-business overdraft agreement where the terms of that agreement provide for very significantly different levels of charge for credit in respect of different tiers of drawdown under the facility, other than where one of the tiers is free of charge.~~
- (2) ~~Where this rule applies, the firm must send an alert to the banking customer if the firm:~~
- ~~(a) knows based on information available to it that the banking customer's personal current account has entered a different tier of drawdown under the facility where very significant additional costs are associated with that tier of drawdown; or~~
  - ~~(b) is reasonably able to determine that, taking into account information it has access to on transactions due to be settled, the circumstances in (a) will occur that day in the absence of:~~
    - ~~(i) action by the banking customer; or~~
    - ~~(ii) a transaction other than those the firm is aware of.~~
- (3) ~~The alert must communicate to the banking customer in plain simple language:~~
- ~~(a) the reason why the alert has been sent;~~
  - ~~(b) that the banking customer has incurred or may incur charges; and~~
  - ~~(e) that the banking customer has a period of time during which they have an opportunity to take action to avoid or reduce charges, and specify:~~
    - ~~(i) the actions which may be taken; and~~
    - ~~(ii) the time by which the banking customer must take such action to reduce or avoid the charge or charges. [deleted]~~

General provisions about the timing and content of alerts

8.4.17 R Where a *firm* has sent an alert under *BCOBS* 8.4.12R to ~~8.4.16R~~ 8.4.15R it is not required to send a further alert in respect of the same personal current account under the same *rule* unless, since the last alert under that *rule* was sent:

...

(5) in respect of alerts sent under *BCOBS* 8.4.15R, the obligation to send the alert arises because of a further attempt to enter unarranged overdraft; ~~;~~

(6) ~~in respect of alerts sent under *BCOBS* 8.4.16R(2)(a), any arranged overdrawing within the tier of drawdown that significant additional costs are associated with has been repaid; and~~ [deleted]

(7) ~~in respect of alerts sent under *BCOBS* 8.4.16R(2)(b), either:~~

(a) ~~the personal current account did not enter the tier of drawdown that significant additional costs are associated with on the day the alert was sent; or~~

(b) ~~the personal current account entered that tier of drawdown but any arranged overdrawing within that tier has been repaid.~~ [deleted]

8.4.18 R ...

(2) Where the obligation to send an alert or alerts is brought about by one or more scheduled payments, the *firm* must:

...

(b) where the alert is required under *BCOBS* 8.4.12R ~~or *BCOBS* 8.4.16R~~, send an alert no later than 12:00 midday on the day when the obligation to send the alert arises; and

...

...

## Annex B

### Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless indicated otherwise.

#### Part 1: Comes into force on 18 December 2019

Insert the following new text after CONC 5B (Cost cap for rent-to-own agreements). The text is not underlined.

#### 5C Note regarding Chapter 5C

**Note:** a new Chapter 5C, as added by the Personal Current Accounts and Overdrafts Instrument 2019 (FCA 2019/71), comes into force on 6 April 2020.

#### 5D Overdraft repeat use

##### 5D.1 Purpose and application

Purpose

- 5D.1.1 R (1) In this chapter, “repeat use” refers to a pattern of overdraft use where the frequency and depth of use may result in high cumulative charges that are harmful to the *customer* or indicate that the *customer* is experiencing or at risk of financial difficulties.
- (2) The expressions “arranged overdraft”, “excluded account”, “personal current account”, “private bank” and “unarranged overdraft” have the same meaning as set out at *CONC 5C*.
- 5D.1.2 G The purpose of this chapter is to require *firms* to:
- (1) monitor *customers*’ patterns of overdraft use;
  - (2) identify *customers* with patterns of repeat use; and
  - (3) take appropriate steps with the aim of changing such patterns of use.

Who and what?

- 5D.1.3 R (1) Subject to (2), this chapter applies to a *firm* with respect to *consumer credit lending* and connected activities in relation to arranged overdrafts and unarranged overdrafts associated with personal current accounts.
- (2) This chapter does not apply to:
- (a) a *firm* if all personal current accounts provided or offered by the *firm* are excluded accounts;
  - (b) a *firm* in respect of any personal current account which may be used for a currency other than a currency of the *United Kingdom*;
  - (c) a private bank; or
  - (d) a *credit union*.

Where?

- 5D.1.4 R This chapter applies to a *firm* with respect to activities carried on from an establishment maintained by it in the *United Kingdom*.

## 5D.2 Obligation to identify and monitor repeat use of overdrafts

- 5D.2.1 R A *firm* must establish, implement and maintain clear and effective policies, procedures and systems to:
- (1) monitor and review periodically the pattern of drawings and repayments of each of its *customers* under an arranged overdraft or an unarranged overdraft, and other relevant information held by the *firm*; and
  - (2) identify, by reference to an appropriate collection of factors, any *customers* in respect of whom there is a pattern of repeat use, and then sub-divide those *customers* into the following two categories:
    - (a) *customers* in respect of whom there are signs of actual or potential financial difficulties;
    - (b) all other *customers* who show a pattern of repeat use (that is, all *customers* within *CONC* 5D.2.1R(2) who are not in category (a)).
- 5D.2.2 R The *rules* in *CONC* 5D.2.1R(1) and (2) do not apply where the *firm* is already in the process of intervening in respect of the *customer's* overdraft use in accordance with *CONC* 5D.3.
- 5D.2.3 G (1) The policies, procedures and systems referred to in *CONC* 5D.2.1R should, having regard to the nature, scale and complexity of the *firm's* *consumer credit lending* activity in relation to overdrafts, enable the *firm*, at regular intervals, to pro-actively look back over an appropriate period at patterns of overdraft use.
- (2) A *firm* may decide the frequency with which it reviews previous overdraft use, and the length of the preceding period of overdraft use that

it considers when doing so, provided that the *firm* can demonstrate that its policies, procedures and systems are effective in promptly identifying *customers* who are within *CONC* 5D.2.1R(2)(a) or (b).

- (3) *CONC* 5D.2.1R does not specify the frequency, duration or amount of drawings that may constitute repeat use. *Firms* have discretion, therefore, to tailor the policies, procedures and systems required by *CONC* 5D.2.1R to their specific business circumstances. If a *customer* has become or remained overdrawn in every *month* over the preceding 12-*month* period, it is likely that the *customer* will be within *CONC* 5D.2.1R(2)(a) or (b). It is also likely, however, that there will be other patterns of drawings in fewer numbers of *months* that are caught by *CONC* 5D.2.1R(2)(a) or (b). There need not necessarily be drawings under an overdraft in consecutive *months* in order for use to be properly treated as repeat use. Conversely, there may be small and temporary drawings, even in consecutive *months*, that are neither indicative of actual or potential financial difficulties nor the cause of high cumulative charges.
- (4) When determining whether there is a high cumulative charge for overdraft use which may be harmful, the *firm* should consider the total amount of the combined charges both in absolute terms and relative to the *customer's* financial circumstances, where known.
- (5) Where there is a pattern of repeat use of an overdraft associated with a personal current account, features of that use and other factors which may be a sign of actual or potential financial difficulties include:
  - (a) one or more of the matters set out in *CONC* 1.3.1G(1) to (7) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
  - (b) an upward trend in a *customer's* use of the overdraft over time, having regard to one or both of the following:
    - (i) the number of *days* of use per *month*; and
    - (ii) the value of the *customer's* borrowing.
  - (c) changes to the regular credits or debits to the personal current account, which may indicate a fall in disposable income or increased expenditure;
  - (d) use of other products which may indicate a fall in disposable income or growing indebtedness (for example, a reduction in the balance of a savings account, or an increase in the outstanding balance on another *credit* product) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
  - (e) the use of an unarranged overdraft associated with the personal current account, especially if becoming larger, more sustained or more frequent over time;



- (f) the incidence of refused payments in relation to the personal current account, especially if there is a rise in the number or frequency of refused payments over time;
  - (g) information provided by the *customer* that indicates the *customer* is in, or is likely to experience, financial difficulties.
- (6) A *customer* may in fact be in actual or potential financial difficulties even if none of the factors described above is present, so the *customer's* response to the *firm's* initial intervention will be important for determining the appropriate next steps.
- (7) When a *firm* is first implementing policies, procedures and systems to identify *customers* in respect of whom there is a pattern of repeat use, the *firm* should give priority to identifying those *customers* who are vulnerable and experiencing, or at risk of, financial difficulties, in circumstances where prioritisation is appropriate in the light of the scale and complexity of the *firm's consumer credit lending activity* in relation to overdrafts.

### 5D.3 Interventions to be taken in the case of repeat users

- 5D.3.1 R (1) This *rule* applies where a *firm*:
- (a) identifies that a *customer* has a pattern of repeat use within the meaning of *CONC 5D.2.1R(2)(b)*;
  - (b) assesses that the *customer* is likely to continue that pattern of use; and
  - (c) does not consider, acting reasonably, that the *customer* is one in respect of whom there are signs of actual or potential financial difficulties.
- (2) The *firm* must communicate with the *customer* (“the first communication”) in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) highlighting the *customer's* pattern of overdraft use and indicating that the *customer* should consider whether it is resulting or may result in high avoidable costs.
- (3) The *firm* must continue to monitor and review the *customer's* pattern of overdraft use after the first communication, and if after a reasonable period the pattern of use continues to be within *CONC 5D.2.1R(2)(b)*, the *firm* must further communicate with the *customer* (“the second communication”), reminding the *customer* of the content of the first communication or reiterating that content.
- (4) The *firm* must continue to monitor and review the *customer's* pattern of overdraft use after the second communication, and if the pattern of use

continues to be within *CONC* 5D.2.1R(2)(b), the *firm* must continue to communicate with the *customer* in similar terms or for a similar purpose at least annually until such time as the pattern of use ceases to be within *CONC* 5D.2.1R(2)(b).

- 5D.3.2 R (1) This *rule* applies where a *firm* identifies that a *customer*:
- (a) has a pattern of repeat use within the meaning of *CONC* 5D.2.1R(2)(a); and
  - (b) is one in respect of whom there are signs of actual or potential financial difficulties.
- (2) The *firm* must communicate with the *customer* in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) highlighting the *customer's* pattern of overdraft use and indicating that the *customer* should consider whether it is resulting or may result in high avoidable costs. The *firm* must encourage the *customer* to contact the *firm* to discuss their situation and explain that doing nothing could make things worse. The *firm* must also provide contact details for *not-for-profit debt advice bodies*.
- (3) If after a reasonable period the *customer* has not contacted the *firm* and the *customer's* pattern of use continues to be within *CONC* 5D.3.2R(1), the *firm* must take reasonable steps to contact the *customer* to discuss their situation.
- (4) In discussions under (2) or (3) (which need not be on a single occasion), the *firm* must seek to explore the reasons for the *customer's* pattern of overdraft use, as well as the reasons for the *customer's* actual or potential financial difficulties, and what (if anything) the *customer* is doing, or intends to do, to address those issues.
- (5) If appropriate, in the light of the information gathered under (4), the *firm* must:
- (a) identify and set out suitable options designed to help the *customer*:
    - (i) to reduce their overdraft use over a reasonable period of time; and
    - (ii) to address their actual or potential financial difficulties, in such a way that does not adversely affect the *customer's* financial situation; and
  - (b) explain that, if the *customer* fails to engage in the discussion or fails to take appropriate action to address the situation, one of the possible consequences is that the *firm* may need to consider the

suspension or removal of the overdraft facility or a reduction in the credit limit.

- (6) If the *customer* declines to contact the *firm* in response to the communication in (2) and to respond to attempts by the *firm* to contact them under (3), or to take reasonable steps to take forward an appropriate option under (5) or to otherwise address the situation, the *firm* must after a reasonable period consider whether to continue to offer the overdraft facility and whether to reduce the credit limit.
- (7) Sub-paragraph (6) does not apply if the suspension or removal of the overdraft facility or a reduction in the credit limit would cause financial hardship to the *customer*.

- 5D.3.3 G
- (1) The purpose of *CONC* 5D.3 is to require a *firm* to intervene in an appropriate and proportionate manner where it detects repeat use of an overdraft with the aim of reducing that use and improving the *customer's* financial situation. A *firm* should keep in mind, when doing so, the principle that an overdraft is not generally suitable for long-term use that results in a high total cost burden, as well as the need to pay due regard to the interests of its *customers* and treat them fairly in accordance with *Principle 6*.
  - (2) *CONC* 5D.3 does not specify a particular form of words to be used in communications with repeat overdraft users, and *firms* have discretion to tailor the language and tone of those communications to the circumstances of the individual *customer*.
  - (3) For the purposes of *CONC* 5D.3.2R(3), “reasonable period” is unlikely to be longer than one *month*.
  - (4) Options that a *firm* could identify for the purposes of *CONC* 5D.3.2R(5)(a) may include, where assessed as appropriate for the *customer*:
    - (a) advice on budgeting and money management, for example adjusting payment dates or setting up alerts;
    - (b) providing contact details for *not-for-profit debt advice bodies* and other relevant bodies (for example, one providing advice on budgeting or money management), and encouraging the *customer* to contact one of them;
    - (c) the provision by the *firm* to the *customer* of alternative *credit* on more favourable terms (for example a fixed-sum loan repayable by instalments), provided that, if this would be accompanied by suspension or removal of an existing *credit* facility, this would not cause financial hardship to the *customer*;
    - (d) forbearance, such as reducing or waiving interest and other charges or (where applicable) allowing additional time to pay,

where this does not unduly delay further help to the *customer* or permit further deterioration of the *customer's* financial position; or

- (e) a reduction in the credit limit or the suspension or removal of the overdraft facility (or reminding the *customer* that they can ask the *firm* to take these steps) provided that such reduction, suspension or removal would not cause financial hardship to the *customer*.
- (5) If an overdraft *customer* has already been identified by a *firm* as being in financial difficulties, and is already being treated with appropriate forbearance by the *firm*, the *rules* in this section do not require the *firm* to do anything which is inconsistent with the treatment that it has already adopted in respect of that *customer*.
- (6) *Firms* are reminded that they should not consider the suspension or removal of the overdraft facility, or a reduction in the credit limit, under *CONC 5D.3.2R(6)* if this would cause financial hardship to a *customer* (*CONC 5D.3.2R(7)*). A *firm* should give careful thought to the potential effect of suspension, removal or reduction on the *customer* and consider these steps as part of a response to repeat use only where the *firm* is confident, on the basis of sufficient information and enquiry, that they would not cause financial hardship in the individual circumstances of the case.

#### **5D.4 Monitoring repeat use strategies**

- 5D.4.1 R A *firm* must monitor and periodically review the effectiveness of its policies, procedures and systems under *CONC 5D.2.1R*, and update or adjust them as appropriate.
- 5D.4.2 G In assessing and periodically reviewing the effectiveness of its policies, procedures and systems under *CONC 5D.2.1R*, a *firm* should have regard, amongst other matters, to the number of repeat users and size of their overdraft balances before putting in place the procedures required by these *rules*, compared with the number and size following implementation of those procedures. More generally, a *firm* should assess the extent to which it has been able to assist those *customers* who were showing a pattern of repeat use and who could benefit from assistance.

#### **5D.5 Reporting on repeat use of overdrafts**

- 5D.5.1 R (1) A *firm* must submit a document to the *FCA* by electronic mail to [overdrafts@fca.org.uk](mailto:overdrafts@fca.org.uk), containing a detailed description of the policies, procedures and systems it establishes to comply with:
  - (a) *CONC 5D.2.1R*;
  - (b) *CONC 5D.3.2R*; and
  - (c) *CONC 5D.4.1R*

no later than the date on which the *firm* becomes subject to *CONC 5D*.

- (2) A *firm* must prepare two reports for the *FCA* describing the results of the monitoring required by *CONC 5D.4.1R*. The first report must be in respect of the six-month reporting period beginning on the date on which the *firm* becomes subject to *CONC 5D*. The second report must be in respect of the six-month reporting period that begins immediately after the end of the reporting period covered by the first report. Each report must be submitted to the *FCA* by electronic mail to [overdrafts@fca.org.uk](mailto:overdrafts@fca.org.uk) within one month following the end of the relevant six-month reporting period and must include the following information:
- (a) the number of repeat users and total size of their overdraft balances at the start of the reporting period;
  - (b) the number of repeat users and total size of their overdraft balances at the end of the reporting period; and
  - (c) any explanation, commentary or background on the figures in (a) and (b).
- (3) Where a *firm* proposes to update its policies, procedures and systems, it must submit a report to the *FCA* containing a description of any substantial changes.

Amend the following as shown.

#### TP 8 Other transitional provisions

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Material to which the transitional provision applies</b>		<b>Transitional provision</b>	<b>Transitional provision: dates in force</b>	<b>Handbook provision coming into force</b>
...					
<u>4</u>	<u>CONC 5D.1.1R(2)</u>	<u>R</u>	<p>The expressions in <u>CONC 5D.1.1R(2)</u> have the following meaning:</p> <p>(1) <u>An “arranged overdraft” is the running-account</u></p>	<u>18 December 2019 to 6 April 2020</u>	<u>18 December 2019</u>

facility provided for in an *authorised non-business overdraft agreement* that is a *regulated credit agreement*.

- (2) An “excluded account” is a personal current account that is offered on terms that:
- (a) an agreement which provides authorisation in advance for the *customer* to overdraw on the account cannot arise; and
- (b) either:
- (i) the account cannot become overdrawn without prior arrangement ; or
- (ii) no charge is payable (by way of interest or otherwise) if the account becomes overdrawn without prior arrangement ; and
- (c) no charge is payable where the

firm refuses a payment due to lack of funds.

(3) A “personal current account” means an account, other than a current account mortgage, which is a payment account within the meaning of the *Payment Accounts Regulations*.

(4) A “private bank” is a bank or building society, or an operationally distinct brand of such a firm, over half of whose personal current account customers each had throughout the previous financial year net assets with a total value of not less than £250,000. For this purpose:

(a) net assets do not include:

(i) the value of the customer’s primary residence or any loan secured on that residence;

(ii) any rights of the customer under a qualifying contract of

insurance within the meaning of the *Regulated Activities Order*; and

(iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the *customer* or on retirement, and to which the *customer* (or the *customer's* dependents) are, or may be, entitled; and

(b) “previous financial year” means the most recent period of one year ending with 31 March.

(5) An “unarranged overdraft” is a *regulated credit agreement* that arises as a result of:

(a) a personal current account becoming overdrawn in the absence of an



			<u>arranged overdraft:</u> <u>or</u> (b) <u>the firm making available to the customer funds which exceed the limit of an arranged overdraft.</u>		
<u>5</u>	<u>CONC 5D.1.1R(2)</u>	<u>G</u>	<u>CONC 5D.1.1R(2) provides that the expressions referred to in that rule are to have the meaning set out at CONC 5C. Since CONC 5D comes into force before CONC 5C comes into force, CONC TP 8.4 provides that the expressions are to have the meaning set out in that transitional provision (which are identical to the meaning given to the expressions in CONC 5C) until CONC 5C comes into force.</u>	<u>18 December 2019 to 6 April 2020</u>	<u>18 December 2019</u>

## Part 2: Comes into force on 6 April 2020

### 3 Financial promotions and communications with customers

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#### 3.1 Application

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Who? What?

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- 3.1.8 G CONC 3.1.7R(1) does not enable detailed information to be given about credit available from the firm. Firms should note that the image advertising exclusion in CONC 3.1.7R(1) is subject to compliance with the rules specified in (2), including the rules which require the inclusion of a representative APR in specified circumstances (although the rules in CONC 3.5.9R about the wording

that must accompany a representative APR do not apply to image advertising).  
 A name or logo may trigger the requirement to include a *representative APR*.  
*Firms* should not include any information not referred to in *CONC 3.1.7R(1)*  
 and should avoid the use of names, logos or addresses, for example, which  
 attempt to convey additional product or cost-related information.

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### 3.5 Financial promotions about credit agreements not secured on land

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Representative example

3.5.5 R ...

(7) *A financial promotion for an authorised non-business overdraft agreement provided by a firm of a type listed in CONC 5C.1.2R(2) is not required to include a representative APR.*

[**Note:** regulation 5(5) of *CCAR 2010*]

Guidance on the representative example

3.5.6 G ...

(1C) (a) The guidance in this provision is relevant to the calculation of an APR for an authorised non-business overdraft agreement which is a necessary first step when calculating the representative APR in a financial promotion for the authorised non-business overdraft agreement. It is, therefore, also relevant to the calculation of the representative APR in a financial promotion for an authorised non-business overdraft agreement.

(b) This guidance relates to a situation where the terms and conditions that apply to an authorised non-business overdraft agreement provide that no interest or other charges are payable in relation to a drawing (authorised in advance) up to a specified amount (including in circumstances where the drawdown exceeds the specified amount). This is sometimes referred to as a “fee-free amount”.

(c) Firms are reminded that CONC 5C.2.1R(7) prohibits certain types of fee-free amounts in relation to overdrafts where the benefit of the fee-free amount is liable to be lost in certain circumstances.

(d) (i) For the purposes of calculating the total charge for credit and the APR, CONC App 1.2.5R (Assumptions for calculation) sets out various assumptions. A number of these assumptions apply “where necessary” to deal in a consistent and comparable way with factors that are not

certain at the time the *total charge for credit* or *APR* is calculated.

(ii) Where, however, the terms of a permissible fee-free amount that apply to an *authorised non-business overdraft agreement* are known at the time the *APR* is calculated (and the incidence of the benefit of the fee-free amount is certain if the overdraft is used), the *APR* calculation should reflect those terms. In that situation, it is unlikely to be necessary to make the assumption that the fee-free amount does not exist under *CONC App 1.2.5R*.

(1D) (a) (i) This *guidance* is relevant to whether to include account fees in the calculation of the *APR* for an *authorised non-business overdraft agreement*. The type of account fee this *guidance* is intended to address is a periodic charge a *customer* is required to pay in order to obtain and maintain access to a personal current account that has an overdraft facility.

(ii) *CONC App 1.2.3R* (Total charge for credit) provides that the costs of maintaining an account recording both payment transactions and drawdowns are included in the *total cost of credit to the borrower*. There is an exception to this *rule* (see *CONC App 1.2.3R(3)*) where: “(a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the *regulated credit agreement* or in any other agreement with the *borrower*; (b) in the case of an *overdraft facility* the costs do not relate to that facility.”

(iii) Whether an account fee is required to be included in the calculation of an *APR* depends on whether the *credit* under the associated *authorised non-business overdraft agreement* can be obtained on the same terms without incurring the account fee. If an *authorised non-business overdraft agreement* is not available on the same equally favourable terms without the imposition of the fee, that fee is likely to be considered to “relate” to the overdraft facility.

(b) The following are examples of situations where it is likely that an account fee should be included in the calculation of the *total charge for credit* and the *APR* for an *authorised non-business overdraft agreement*.

(i) A personal current account that is subject to an account fee, one of the features of which is an arranged overdraft facility with more favourable terms (for example, a lower

interest rate) than those offered on accounts that do not require the payment of an account fee.

(ii) A firm that offers personal current accounts with associated arranged overdraft facilities in respect of all of which there is an account fee.

(c) A firm may offer a “packaged bank account” that is a composite product with a number of constituent elements, one of which is an overdraft facility, but others of which are different services. If there is a fee for an optional non-overdraft element of the package that the customer can avoid by choosing not to have that element of the package, and the customer can still have the overdraft element of the package on the same terms, that avoidable fee should not be included in the APR calculation.

...

(7) Other than in the case of an authorised non-business overdraft agreement provided by a firm of a type listed in CONC 5C.1.2R(2), where a financial promotion for an authorised non-business overdraft agreement is required to include a representative example, one of the items that must be included in the example is the representative APR.

Other financial promotions requiring a representative APR

3.5.7 R ...

(1A) A financial promotion which states that a cash sum is available for opening an account, other than a current account mortgage, which is a payment account within the meaning of the Payment Accounts Regulations and which does not refer to the availability of credit under an authorised non-business overdraft agreement in connection with that account must not be regarded as including an incentive to apply for credit or to enter into an agreement under which credit is provided for the purposes of (1)(c).

...

(3) This rule does not apply to a financial promotion:

(a) for an authorised non-business overdraft agreement provided by a firm of a type listed in CONC 5C.1.2R(2); or

...

3.5.8 G ...

(6) CONC 3.5.7R applies to a firm with respect to a financial promotion for an authorised non-business overdraft agreement except a firm of a type listed in CONC 5C.1.2R(2).

Annual percentage rate of charge

3.5.9 R In a *financial promotion*:

...

(2) where an *APR* is subject to change it must be accompanied by the word “variable”; ~~and~~

(3) the *representative APR* must be accompanied by the word “representative”; ~~and~~

(4) where the *financial promotion* is:

(a) in writing; and

(b) for an *authorised non-business overdraft agreement*,

the *representative APR* must be accompanied by the following information:

(c) a statement as follows:

“How does our overdraft compare?”; and

(d) wording, in plain and intelligible language, that explains to *customers* that the purpose of a *representative APR* is to enable *customers* to compare the costs associated with different *credit products*; and

this information must be given reasonable prominence and be in sufficiently close proximity to the *representative APR* to make it reasonably apparent to *customers* that the relevant wording relates to the *representative APR*.

[**Note:** regulation of *CCAR 2010*]

3.5.9A G *CONC 3.5.9R(4)* applies only to *financial promotions* that are in writing. In accordance with *GEN 2.2.14R*, this means *financial promotions* that are in legible form and capable of being reproduced on paper, irrespective of the medium used. The rule does not, therefore, apply to a *financial promotion* communicated by means of television or radio broadcast.

Delete the following text as shown.

~~5C Note regarding Chapter 5C~~

~~Note: a new Chapter 5C, as added by the Personal Current Accounts and Overdrafts Instrument 2019 (FCA 2019/71), comes into force on 6 April 2020.~~

Insert the following new content after CONC 5B (Cost cap for rent-to-own agreements). The text is not underlined.

## **5C Overdraft pricing**

### **5C.1 Application and purpose**

Purpose

5C.1.1 G The purpose of this chapter is to:

- (1) require *firms* to implement and maintain overdraft charging structures that are simple, transparent and capable of easy comparison; and
- (2) forbid *firms* from obliging a *customer* to pay a rate of interest for an unarranged overdraft which exceeds the rate of interest for an arranged overdraft that is relevant to that *customer*.

Who and what?

5C.1.2 R (1) Subject to (2), this chapter applies to a *firm* with respect to *consumer credit lending* and connected activities in relation to arranged overdrafts and unarranged overdrafts associated with personal current accounts.

(2) This chapter does not apply to:

- (a) a *firm* if all personal current accounts provided or offered by the *firm* are excluded accounts;
- (b) a *firm* in respect of any personal current account which may be used for a currency other than a currency of the *United Kingdom*;
- (c) a private bank; or
- (d) a *credit union*.

Where?

5C.1.3 R This chapter applies to a *firm* with respect to activities carried on from an establishment maintained by it in the *United Kingdom*.

### **5C.2 Charges for overdrafts to be interest rates**

5C.2.1 R (1) A *firm* must not:

- (a) enter into an agreement with a *customer* that provides for an arranged overdraft charge or an unarranged overdraft charge; or
- (b) impose on a *customer* an arranged overdraft charge or an unarranged overdraft charge,

unless the conditions in (2) to (7) are satisfied.

- (2) The charge must be a rate of interest expressed as a percentage applied on an annual basis to the relevant balance of arranged overdraft or unarranged overdraft (as the case may be).
- (3) The rate of interest that applies to any given balance of arranged overdraft relating to a personal current account must either be zero or the same as the rate of interest that applies to any other balance of arranged overdraft in respect of that personal current account.
- (4) The rate of interest that applies to any given balance of unarranged overdraft relating to a personal current account must either be zero or the same as the rate of interest that applies to any other balance of unarranged overdraft in respect of that personal current account.
- (5) A *firm* must not require a *customer* to pay more than one arranged overdraft charge or more than one unarranged overdraft charge arising out of the same event.
- (6) Where a *customer* has an arranged overdraft, in relation to a personal current account, to which a rate of interest above zero applies, any unarranged overdraft charge imposed on the *customer* in relation to that personal current account must also consist of a rate of interest computed, structured and presented in an identical manner (although the level of the rate of interest that applies to the unarranged overdraft may be lower).
- (7) If, in relation to an overdraft, a *firm* indicates to a *customer* that no interest is payable on the overdraft balance, or a tranche of the overdraft balance up to a specified amount, the *firm* must not have a contractual right to impose interest referable to that overdraft balance or tranche of the balance if it is exceeded, or depending on whether or not certain conditions are met.

- 5C.2.2 G
- (1) The purpose of *CONC 5C.2.1R* is to permit a *firm* to impose an arranged overdraft charge or an unarranged overdraft charge on a *customer* only if the charge takes the form of an annual rate of interest. Consistent with this, a *firm* is forbidden from imposing on a *customer* a fee for making available an arranged overdraft facility (unless the amount of credit made available under the facility exceeds £10,000).
  - (2) *CONC 5C.2.1R* does not affect an arranged overdraft charge or an unarranged overdraft charge, liability for which accrued before the date on which *CONC 5C.2.1R* came into force. *CONC 5C.2.1R* does affect, however, an arranged overdraft charge or an unarranged overdraft charge

liability for which accrued on or after the date on which *CONC 5C.2.1R* came into force, irrespective of whether the arranged overdraft facility was granted or the agreement for the personal current account was made before or after the date on which *CONC 5C.2.1R* came into force.

- (3) There has to be a single, uniform contractual rate of interest in respect of an individual *customer* that applies to any amount of arranged overdraft balance (other than any part of the balance that is free). This means that a *firm* may not have a graduated overdraft charging structure, where different rates of interest apply to specified tiers or bands of arranged overdraft balance, even if a higher band or tier is described as being intended for occasional emergency borrowing, or where lower or higher rates are contingent on certain behaviour, such as making or maintaining certain amounts or frequencies of deposits. A *firm* should not, for instance, calculate an arranged overdraft charge using a rate of interest of 3 per cent per annum if the *customer* borrows £100 by way of arranged overdraft, but use a rate of interest of 5 per cent per annum if the *customer* borrows £300. A *firm* may, however, vary a rate of interest using a contractual power of variation if it is fair, valid and enforceable.
- (4) Similarly, there has to be a single, uniform contractual rate of interest in respect of an individual *customer* that applies to any amount of unarranged overdraft balance (other than any part of the balance that is free), although this rate of interest may be lower than that which applies to an arranged overdraft balance.
- (5) A *firm* is not prevented from providing in the terms and conditions of the overdraft that no interest is payable in respect of arranged overdraft balances or unarranged overdraft balances of up to specified amounts (sometimes described as “fee-free amounts” or “buffer zones”) where permitted by *CONC 5C.2.1R*. The purpose of *CONC 5C.2.1R(7)* is to prevent *firms* from offering fee-free amounts or buffer zones that are free only in certain circumstances. An example of a buffer zone that is not permitted is where no interest is payable if an unarranged overdraft balance does not exceed the upper threshold of the buffer zone, but where interest becomes payable in respect of the entire balance (including the part of the balance in the buffer zone) if the *customer* exceeds the threshold.
- (6) A *firm* is not prevented from waiving or reducing overdraft charges (in whole or in part) in appropriate circumstances (for example, where the *firm* is treating a *customer* with forbearance in line with other *rules* in this sourcebook).
- (7) *CONC 5C.2.1R* does not prohibit the level of the single, uniform contractual rate of interest from differing from *customer* to *customer*, or between personal current accounts for the same *customer*.
- (8) (a) The definitions of an arranged overdraft charge and an unarranged overdraft charge are broad.



- (b) These definitions capture any charges that arise because a *customer* has used an overdraft, or that are triggered by - or the size of which are affected by - the fact that the personal current account has entered, remains in, or extended, a debit position.
  - (c) If the agreement provides that a charge is payable by a *customer* in exchange for the creation or continuation of an arranged overdraft facility, whether or not the *customer* in fact uses the facility, this charge is also caught by the definition of an arranged overdraft charge unless the facility has a pre-agreed limit in excess of £10,000. A charge of this sort is often referred to as a “facility fee” and payable periodically, for example annually.
  - (d) The definitions of an arranged overdraft charge and an unarranged overdraft charge are not limited to charges that are described as financial consideration for the provision of *credit*. They could include, for example, a charge that is expressed as being referable to the execution of the payment transaction, if the charge is payable only where the transaction results in the account being in an overdrawn position or remaining in such a position. A charge for a payment transaction that is payable irrespective of whether or not the current account has a credit balance or a debit balance is not, however, caught by these definitions.
  - (e) The definitions also do not include charges for operating or maintaining a personal current account (as distinct from charges for granting or continuing to make available an arranged overdraft facility in connection with the account), provided that the incidence and amount of the charges are not affected by whether or how much the *customer* uses an overdraft. A monthly account charge could be an example of such a charge.
- (9) *CONC 5C.2* requires *firms* to use only a rate of interest expressed as a percentage applied on an annual basis to the relevant balance of arranged overdraft or unarranged overdraft. If interest is compounded, *firms* are free to choose the intervals at which they add arranged overdraft charges and unarranged overdraft charges to the principal balance, provided that the same compounding frequency is used in relation to the *customer’s* arranged overdraft and unarranged overdraft in respect of the same personal current account.
- (10) *Firms* are reminded of the obligation in *CONC 3.5.3R(1)* to include a representative example (including the *representative APR*) in a *financial promotion* that indicates a rate of interest or an amount relating to the *cost of credit*. *Firms* are also reminded of the obligation in *CONC 3.5.7R(1)* to include in a *financial promotion* a *representative APR* if the *financial promotion* states or includes certain matters. *Firms* are referred to the *guidance* in *CONC 3.5.6G(2)* in relation to how the rate of interest in *CONC 3.5.5R(1)* should be calculated for the purposes of the representative example in *CONC 3.5.3R(1)*.

- (11) In *CONC 5C.2.1R(1)(b)*, “impose” an arranged overdraft charge or an unarranged overdraft charge includes creating the contractual right to receive it, and relying on, or enforcing, the contractual right or purporting to do so.

**5C.3 Interest rates for unarranged overdrafts to be no more than the interest rates for arranged overdrafts**

5C.3.1 R (1) A *firm* must not:

- (a) enter into an agreement with a *customer* that provides for payment by the *customer* of an unarranged overdraft charge; or
- (b) impose on a *customer*, who enters into an unarranged overdraft, an unarranged overdraft charge,

unless the charge satisfies the conditions in (2) or (3) (as applicable).

(2) (a) This sub-paragraph applies where:

- (i) the *customer* concerned has an arranged overdraft in connection with the personal current account; and
- (ii) interest can become payable on some or all of the balance of that arranged overdraft.

(b) The rate of interest that applies to the unarranged overdraft must not exceed the rate of interest referred to in (a)(ii) that applies to the arranged overdraft.

(3) (a) This sub-paragraph applies where (2)(a) does not apply.

(b) The *firm* must take reasonable steps to identify the type of personal current account provided by it (referred to in this sub-paragraph as the “comparable account”):

- (i) that bears closest resemblance to the personal current account held by the *customer*;
- (ii) in connection with which an arranged overdraft can arise:

(A) of an amount equivalent to the amount of the unarranged overdraft; and

(B) that can attract the payment of interest; and

(iii) that has been made available to a significant number of its *customers*.

(c) The rate of interest that applies to the unarranged overdraft must not exceed the relevant rate of interest identified in (d).

- (d) The relevant rate of interest for the purposes of (c) is:
- (i) where there is only one rate of interest that applies to arranged overdrafts connected to the comparable account, that rate; or
  - (ii) where there are two or more rates of interest that apply to arranged overdrafts connected to the comparable account, the highest of those rates that is imposed on a not insignificant number of the *customers* to whom the account has been made available.

- 5C.3.2 R If a *firm* imposes an unarranged overdraft charge in contravention of *CONC* 5C.3.1R(1)(b), the obligation to pay the charge is unenforceable against the *customer* and the *customer* is entitled to recover any sum paid by, or on behalf of, the *customer* under the obligation imposed.
- 5C.3.3 G (1) The purpose of *CONC* 5C.3.1R is to forbid *firms* from charging a *customer* who borrows a particular amount using an unarranged overdraft facility more than they would have had to pay (disregarding any fee-free amount) if they had borrowed an equivalent amount using their arranged overdraft facility (or, if they do not have an arranged overdraft facility, the highest amount that would have been payable (disregarding any fee-free amount) by a not insignificant number of other *customers* if they had borrowed an equivalent amount under an arranged overdraft facility connected with a comparable personal current account).
- (2) In *CONC* 5C.3.1R(1)(b), *CONC* 5C.3.1R(3)(d)(ii) and *CONC* 5C.3.2R, “impose” an unarranged overdraft charge includes creating the contractual right to receive it, and relying on, or enforcing, the contractual right or purporting to do so (“imposes” and “imposed” should be read accordingly).
- (3) *CONC* 5C.3.1R does not affect an unarranged overdraft charge, liability for which accrued before the date on which *CONC* 5C.3.1R came into force. *CONC* 5C.3.1R does affect, however, an unarranged overdraft charge liability for which accrued on or after the date on which *CONC* 5C.3.1R came into force, irrespective of whether the agreement was made before or after the date on which *CONC* 5C.3.1R came into force.
- (4) A *firm* is not prevented by *CONC* 5C.3.1R from charging a *customer* who borrows using an unarranged overdraft less than it charges the *customer* for using an arranged overdraft facility or from not charging for such borrowing.
- (5) The *rules* in *CONC* 5C.3.1R (other than *CONC* 5C.3.1R(1)(a)) and *CONC* 5C.3.2R are made pursuant to section 137C of the *Act*.

#### 5C.4 Impact of changes to charging structures

- 5C.4.1 R Where a *firm* makes a change to its charging structure or lending policies in response to the *rules* and *guidance* set out in *CONC 5C*, the *firm* must ensure it considers the impact of that change on existing *customers*, including those with large arranged overdraft balances, and, where appropriate, treats such *customers* with forbearance and due consideration.
- 5C.4.2 G (1) A *firm* that makes changes as described in *CONC 5C.4.1R* should, in accordance with *Principle 6*, have due regard to the interests of existing *customers* and treat them fairly. An example of such a change is a change in a *customer's* overdraft limit.
- (2) *Firms* are reminded that the purpose of the *rules* in *CONC 5D* is to require *firms* to identify and provide appropriate assistance to *customers* (including existing *customers* at the time *CONC 5C* becomes applicable) with a pattern of repeat overdraft use.

## 5C.5 Interpretation

- 5C.5.1 R In this chapter:
- (1) An “arranged overdraft” is the running-account facility provided for in an *authorised non-business overdraft agreement* that is a *regulated credit agreement*.
- (2) An “arranged overdraft charge” is a charge that a *firm* is contractually entitled to levy:
- (a) (by way of interest or otherwise) and that would not be due but for the fact that the *customer* has borrowed, or borrowed further or continues to borrow, using an arranged overdraft; or
- (b) exclusively for making available to the *customer* an arranged overdraft with a pre-arranged limit of £10,000 or less, whether or not the *customer* borrows, borrows further or continues to borrow, using the arranged overdraft.
- (3) An “excluded account” is a personal current account that is offered on terms that:
- (a) an agreement which provides authorisation in advance for the *customer* to overdraw on the account cannot arise; and
- (b) either:
- (i) the account cannot become overdrawn without prior arrangement; or
- (ii) no charge is payable (by way of interest or otherwise) if the account becomes overdrawn without prior arrangement; and

- (c) no charge is payable where the *firm* refuses a payment due to lack of funds.
- (4) A “personal current account” means an account, other than a current account mortgage, which is a payment account within the meaning of the *Payment Accounts Regulations* (see *CONC 5C.5.2G(1)*).
- (5) A “private bank” is a *bank* or *building society*, or an operationally distinct brand of such a *firm*, over half of whose personal current account customers each had throughout the previous financial year net assets with a total value of not less than £250,000. For this purpose:
- (a) net assets do not include:
- (i) the value of the *customer’s* primary residence or any loan secured on that residence;
- (ii) any rights of the *customer* under a qualifying contract of insurance within the meaning of the *Regulated Activities Order*; and
- (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the *customer* or on retirement, and to which the *customer* (or the *customer’s* dependents) are, or may be, entitled; and
- (b) “previous financial year” means the most recent period of one year ending with 31 March.
- (6) An “unarranged overdraft” is a *regulated credit agreement* that arises as a result of:
- (a) a personal current account becoming overdrawn in the absence of an arranged overdraft; or
- (b) the *firm* making available to the *customer* funds which exceed the limit of an arranged overdraft.
- (7) An “unarranged overdraft charge” is a charge (by way of interest or otherwise) that a *firm* is contractually entitled to levy and that would not be due but for the fact that the *customer* has borrowed, borrowed further or continues to borrow, using an unarranged overdraft.
- 5C.5.2 G (1) The definition of “personal current account” refers to the definition of a “payment account” under the *Payment Accounts Regulations*, that is: “an account held in the name of one or more consumers through which consumers are able to place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers, but does not include any of the following types of account provided that the account is not used for day-to-day payment transactions: savings accounts; credit card accounts where funds

are usually paid in for the sole purpose of repaying a credit card debt; current account mortgages or e-money accounts”. The *FCA* has issued guidance on this definition: see ‘FG16/6 – Payment Accounts Regulations 2015’.

[**Note:** <https://www.fca.org.uk/publications/finalised-guidance/fg16-6-payment-accounts-regulations-2015-definition-payment-account>]

- (2) The definition of excluded account captures personal current accounts where there cannot be a pre-arranged overdraft facility, there cannot be an unarranged overdraft to which interest or charges apply and charges for refusing a payment due to lack of funds cannot arise.