

Detailed rules for the FCA regime for consumer credit Including feedback on FCA QCP 13/18 and ‘made rules’

February 2014



In this Policy Statement we report on the main issues arising from Consultation Paper 13/10 (Detailed proposals for the FCA regime for consumer credit) and Quarterly Consultation Paper No.3 13/18 and publish the final rules.

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Abbreviations in this document

AML	Anti-money laundering
APF	Authorised professional firm
APR	Annual percentage rate of charge
BBA	British Bankers' Association
BIS	Department for Business, Innovation & Skills
CAB	Citizens advice bureau
CBA	Cost benefit analysis
CC	Competition Commission
CCA	Consumer Credit Act
CCAR	Consumer Credit Advertisements Regulations
CCD	Consumer Credit Directive
CCJ	Consumer Credit Jurisdiction
CDFI	Community development finance institution
CEO	Chief executive officer
CFA	Consumer Finance Association
CJ	Compulsory Jurisdiction
CMA	Competition and Markets Authority
CP	Consultation paper
CPA	Continuous payment authority
CPR	Consumer Protection from Unfair Trading Regulations
CRA	Credit reference agency
DCG	Debt Collection Guidance

DECC	Department of Energy and Climate Change
DETINI	Department of Enterprise, Trade and Investment (Northern Ireland)
DMG	Debt Management Guidance
DMP	Debt management plan
DPA	Data Protection Act
DPB	Designated professional body
EAR	Effective annual rate of interest
EE	Europe Economics
EEA	European Economic Area
EPF	Exempt professional firm
EU	European Union
FCA	Financial Conduct Authority
FRN	Firm registration number
FSA	Financial Services Authority
FSCS	Financial Services Compensation Scheme
FSF	Firm systematic framework
FSMA	Financial Services and Markets Act
HCSTC	High-cost short-term credit
HNW	High net worth
ILG	Irresponsible Lending Guidance
IP	Insolvency practitioner
JSA	Jobseeker's allowance
LATSS	Local Authority Trading Standards Services
LSB	Legal Services Board
MALG	Money Advice Liaison Group
MAS	Money Advice Service

MCD	Mortgage Credit Directive
MCG	Mental Capacity Guidance
MLAR	Mortgage Lending and Administration Return
MLRs	Money Laundering Regulations
MLRO	Money laundering reporting officer
MS	Member States
OFT	Office of Fair Trading
P2P	Peer-to-peer
PCBS	Parliamentary Commission on Banking Standards
PRA	Prudential Regulation Authority
PSD	Product sales data
QCP	Quarterly consultation paper
RDC	Regulatory Decisions Committee
RPB	Recognised professional bodies
SCOR	Steering Committee on Reciprocity
SECCI	Standard European Consumer Credit Information
SIF	Significant influence function
SMEs	Small and medium enterprises
SPR/CPR	Senior persons regime / certified persons regime
SPV	Special purpose vehicle
TAR	Total amount repayable
TCC	Total cost of credit
VJ	Voluntary Jurisdiction
VoP	Variation of permission

Relevant sections of the FCA's Handbook of Rules and Guidance

BCOB	Banking Conduct of Business sourcebook
CASS	Client Assets sourcebook
CONC	Consumer Credit sourcebook
DEPP	Decision Procedure and Penalties manual
DISP	Dispute Resolution: Complaints sourcebook
EG	Enforcement Guide
GEN	General Provisions sourcebook
MCOB	Mortgage Conduct of Business sourcebook
PERG	Perimeter Guidance manual
PRIN	Principles for Businesses
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
SUP	Supervision manual
UNFCOG	Unfair Contract Terms Regulatory Guide

1. Executive Summary

Introduction

- 1.1** On 1 April 2014 we take over the regulation of around 50,000 consumer credit firms from the Office of Fair Trading (OFT). This means we will be bringing all firms that carry on regulated consumer credit activities into our regulatory regime, including our authorisation, supervision and enforcement processes.
- 1.2** We will have stronger powers and more resources than the OFT to regulate the consumer credit industry. Firms will have to comply with our Principles for Businesses, such as treating customers fairly, from 1 April and they should feel the difference under our regime from day one.
- 1.3** Our supervisory approach is risk-based and proactive to allow us to identify consumer harm quickly. Where we find evidence of consumers suffering due to poor services and products, we have powers of intervention, which we will use to take action – including enforcement action and securing redress for consumers where we deem it necessary.
- 1.4** We are now publishing our final rules following our October 2013 consultation paper (CP) and our December 2013 quarterly consultation paper (QCP). While many standards have been carried across from the Consumer Credit Act (CCA) and the OFT guidance, we have made additional rules for high-cost short-term credit (payday) lenders and debt management firms.
- 1.5** In the summer we will consult on proposals for a cap on the cost of high-cost short-term credit. We will also continue to engage with the industry to encourage real-time data sharing.
- 1.6** We will soon publish more information for firms who obtain interim permission about when they should apply for full Financial Conduct Authority (FCA) authorisation or variation of permission. In the meantime if OFT licensees want to continue carrying on the consumer credit activity covered by their OFT licence after 1 April, they must have an interim permission from us or they could be breaking the law.

Changes to proposals

- 1.7** We summarise in Table 1.1 which of the proposals for the new regime have changed as a result of our consultation and how, and which have not.
- 1.8** Table 1.2 summarises the further legislative changes the Government has made since we published our consultation.
- 1.9** For the high-cost short-term credit (HCSTC) sector we have amended the risk warning that we are requiring firms to include in their financial promotions. We have also made some adjustments to our rules about the use of continuous payment authority (CPA) in light of

responses to our consultation, including for loans paid by instalments. We will review whether additional protections are needed for other credit products at a later date.

- 1.10** We have also made some amendments to how we propose to carry across OFT standards into our rules and guidance.

Listening to consumers and firms and acting on what we heard

- 1.11** We received around 300 responses to our consultation from a wide range of stakeholders. We also received feedback in other ways, including from ten roadshows that we held across the country where we spoke directly to firms affected by our proposals. Some stakeholders also corresponded with us directly.
- 1.12** As a result we were able to listen to, consider and act on the concerns raised. Most of our proposals have not significantly changed, but we have amended some based on the responses we had to the consultation. We have also amended and re-consulted on our proposals for authorisation fees.
- 1.13** Respondents generally welcomed our overall approach to regulating consumer credit. We received a lot of comments about how we propose to carry across OFT conduct standards, as well as general requests for further clarification on certain parts of our regulatory approach, such as how we will supervise and enforce our regime.
- 1.14** We received the most feedback on our proposals for the HCSTC sector, including about the consistency of our approach with other lending products, for example overdrafts and credit cards. Some debt management firms also asked for more clarity about our proposals and expectations, for example they wanted to know what proportion of customers' payments should be passed on to creditors from day one of a debt management plan.
- 1.15** We set out the feedback we received and our responses throughout this policy statement.

Who should read this policy statement?

- 1.16** This policy statement will interest:
- firms that currently hold individual credit licences or are covered by group licences issued by the OFT under the CCA
 - firms that are considering carrying on consumer credit activities
 - operators of peer-to-peer (P2P) platforms
 - trade bodies representing consumer credit firms
 - consumer organisations
 - not-for-profit bodies providing debt counselling, debt adjusting or credit information services

- firms that have registered for interim permission
- local authorities that carry on lending within the scope of the Consumer Credit Directive
- other bodies currently involved in regulating consumer credit.

1.17 This paper will also interest consumers. Anyone who has taken out a loan, used a credit card, had difficulties repaying debts, or looked for advice on debt problems may want to see how we will regulate consumer credit firms. More information is included in this document and on our website.

What happens next?

1.18 In this paper we set out the rules we have now made and explain whether they have changed since we consulted on our proposals last year. Firms can use this, and our Handbook of rules and guidance, to see what our expectations are of them. We will expect all consumer credit firms to comply with our rules. Tables 1.3 and 1.4 set out the dates they come into force.

1.19 We will start authorising firms from 1 April 2014. It will take some time to handle the significant number of applications we expect to receive, so if you have interim permission we will notify you to let you know when you should apply and we will publish some help online, including a video, to guide you through the process.

Last chance to register for interim permission

1.20 Many firms have now registered with us for interim permission, which means that they can continue to carry on the consumer credit activities covered by their OFT licence from 1 April as long as they continue to hold a valid OFT licence until then.

1.21 If you do not have interim permission on 1 April, you could be breaking the law if you continue to carry on consumer credit business, and you may be subject to enforcement action by us.

1.22 For more information on registering for interim permission please see our website.

Help for new firms

1.23 Many consumer credit firms will be new to us as a regulator, so we want to make the way we work and the transition from the OFT to our regime as clear as possible. We will publish a guide to help firms understand how it will feel to be regulated by us – please see our website for more details.

Rebates on licence fees for some consumer credit firms

The Government has decided to offer rebates to some consumer credit licence holders as licences will expire on 1 April 2014. For more information on applying for a rebate on your OFT licence, please see our website.

Table 1.1 – Summary of the new regime and the changes we have made in response to consultation**Key proposals: position unchanged****Interim permission**

- Firms with consumer credit licences from the OFT can register for ‘interim permission’ to continue carrying on consumer credit activities from 1 April 2014.

Authorisation

- Firms with interim permission must apply for authorisation (or variation of permission (VoP)) within a specified application period.
- Firms carrying on lower-risk activities can apply for ‘limited permission’.
- The approved persons regime will apply to credit firms in a proportionate way.
- Consumer credit firms can be appointed representatives (excluding lenders that apply interest or charges and credit reference agencies) and there is the option of multiple principal arrangements (including for third party debt collectors).

Supervision and reporting requirements

- During the interim permission period, our supervisory approach will be similar to our normal three-pillar model, but with a greater emphasis on focused firm visits. As firms move through the authorisation process they will fall into line with the normal model.
- Proportionate regulatory reporting will be required.
- HCSTC lenders and providers of home-collected credit will have to report product sales data (PSD).

Conduct standards for all consumer credit firms

- From 1 April 2014 all consumer credit firms must comply with our high-level standards: the Principles for Businesses, the relevant systems and controls rules, and some general provisions including status disclosure rules.
- CCA and OFT standards will be carried across as FCA rules or guidance.
- Detailed rules and guidance will apply to ‘regulated debt counselling’ (but not to giving unregulated generic advice).
- Standards for financial promotions will be aligned with our existing regime, including the requirement to be clear, fair and not misleading.

HCSTC

- Additional requirements will be introduced for HCSTC lending:
 - Advertisements for HCSTC must carry a risk warning.
 - There will be a limit of two unsuccessful attempts to seek payment using a CPA, which can be reset subject to strict conditions.
 - Loans can only be rolled over twice and borrowers must be informed about sources of debt advice before a loan is refinanced.

Prudential standards

- Prudential requirements will apply to debt management firms and large not-for-profit debt advice bodies, reflecting the size of their ‘debts under management’.

P2P lending

- New rules will apply to peer-to-peer lending platforms.

Debt management firms holding client money

- Client money requirements will apply to debt management firms and not-for-profit debt advice bodies holding clients’ money, with additional requirements for larger firms.

Second charge loans

- OFT regime to be carried across pending implementation of the Mortgage Credit Directive (MCD).

Complaints to the Financial Ombudsman Service and redress for consumers

- Firms must comply with requirements for handling, recording, reporting and publishing complaints.
- All micro-enterprises will be eligible to complain to the ombudsman service for activity it covers.
- Complaints against not-for-profit debt advice bodies can be referred to the ombudsman service.
- There will be no Financial Services Compensation Scheme (FSCS) cover but this will be reviewed in 2016, in particular for the debt management sector.

Enforcement

- Our general approach to enforcement, and related policy and procedures for imposing penalties, will be applied from 1 April 2014.

Financial crime

- Firms must comply with requirements for establishing, implementing and maintaining adequate policies and procedures for countering the risk that they might be used to further financial crime.

Key proposals: changes made**Reporting requirements (see Chapter 3)**

- PSD for HCSTC and home-collected credit: two data items dropped.

Conduct standards for all consumer credit activities (see Chapter 4)

- Some specific OFT guidance is to be carried across as guidance rather than rules; other drafting changes made to reflect OFT's wording more closely or provide further clarity.
- Financial promotions: specific transitional arrangements for certain catalogues.
- Guidance added that debt management firms should not allocate more than half the money received from customers in debt management plans to meeting their fees and charges.

HCSTC (see Chapter 5)

- Credit providers with a social purpose, such as community development finance institutions are excluded from the HCSTC definition.
- The wording of the risk warning has been amended.
- Adjustments to our rules on the use of CPAs have been made to (among other things) make clear how they apply to instalment loans and single payments separately agreed by the customer.

Prudential standards for debt management firms (see Chapter 7)

- 'Debts under management' metric adjusted for larger firms to reflect economies of scale.

Table 1.2 – Summary of recent legislative changes¹

SI number	Key changes
SI 2014/366	<p>The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014</p> <ul style="list-style-type: none"> operating an electronic system in relation to lending (P2P platforms) – clarifying the scope of the regulated activity activities relating to regulated mortgage contracts – clarifying the scope of the Regulated Activities Order (RAO) exemption insolvency practitioners (IPs) – exclusion when acting as an IP local authorities – limited exemption scope of limited permission regime European Economic Area (EEA) authorised payment institutions and electronic money institutions – exclusion for firms with passport rights amendments to Payment Services Regulations further amendments to CCA regulations review of retained CCA provisions by 2019
SI 2014/208	<p>The Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014</p> <ul style="list-style-type: none"> financial promotions by employers connected contracts of insurance enforcement of Distance Marketing Directive enforcement of agreements whilst unlicensed duration of interim permission legal professional privilege transitional provisions for pre-contract credit information forms and credit agreements

¹ The Government is also considering possible further legislative changes, including clarifying the position with regard to special purpose vehicles (SPVs).

Table 1.3 – Summary of when new requirements will come into force

Date	Rules coming into force
1 April 2014	<p>In relation to firms generally:</p> <ul style="list-style-type: none"> • High-level rules – Principles for Businesses (PRIN), relevant provisions of Senior Management Arrangements, Systems and Controls (SYSC) and General Provisions (GEN) • Conduct rules – Consumer Credit sourcebook (CONC) <ul style="list-style-type: none"> – carrying across CCA provisions plus OFT guidance as FCA rules or guidance² – some material from existing industry codes • Financial services and Markets Act (FSMA) enforcement powers • Certain requirements to notify information to FCA in line with Principle 11 and chapter 15 of our Supervision manual (but not periodic reporting) <p>In relation to HCSTC:</p> <ul style="list-style-type: none"> • Risk warning in online and electronic financial promotions <p>In relation to debt management:</p> <ul style="list-style-type: none"> • Requirement to signpost free independent debt advice and ensure fees for debt management plans are spread
1 July 2014	<p>In relation to HCSTC:</p> <ul style="list-style-type: none"> • Additional rules on refinancing (rollovers) • Additional rules on CPAs • Risk warning on other financial promotions
1 October 2014	<p>In relation to firms generally:</p> <ul style="list-style-type: none"> • End of transitional period for CONC rules <p>In relation to P2P platforms:</p> <ul style="list-style-type: none"> • Adequate explanations requirements • Creditworthiness requirements • Notices of arrears and default sums • Right of withdrawal <p>In relation to not-for-profit debt advice bodies grandfathered into limited permission on 1 April 2014:</p> <ul style="list-style-type: none"> • End of transitional period for detailed client money rules <p>In relation to HCSTC and home-collected credit:</p> <ul style="list-style-type: none"> • Once authorised, PSD reporting requirements
1 April 2015	<p>In relation to financial promotions:</p> <ul style="list-style-type: none"> • End of transitional period for financial promotions in certain catalogues first communicated before 1 October 2014
1 April 2017	<p>For debt management firms and some not-for-profit debt advice bodies:</p> <ul style="list-style-type: none"> • End of transitional provision for prudential requirements that permits firms not to deduct certain items from their prudential resources

² Six-month transitional if firm can demonstrate compliance with corresponding rule (in specified CCA provisions, regulations or OFT guidance) which is substantially the same in purpose and effect to corresponding CONC rule.

Table 1.4 – Summary of other requirements that come into effect when a firm obtains authorisation

When a firm obtains authorisation	<ul style="list-style-type: none"> • Firms can appoint appointed representatives • Approved persons requirements, including requirement for debt management firms (excluding not-for-profit debt advice bodies) and credit repair firms to appoint a person with responsibility for the compliance function • Controllers regime applies • Periodic reporting and complaints reporting and publication rules from 1 October 2014 or date of authorisation if later • Transitional prudential standards for debt management firms • Detailed client money requirements for debt management firms (other than not-for-profit debt advice bodies grandfathered into limited permission on 1 April 2014), including client asset operational oversight function approved person • Certain new SYSC rules – requirement for most lenders to appoint money laundering reporting officer (MLRO) and have a director responsible for anti-money laundering (AML) systems
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2 Authorisation and potential alternatives

This chapter summarises feedback on Q1 to Q4 of CP13/10 together with our response.

We are expecting many thousands of applications for FCA authorisation, so we are staggering when firms should apply so that we can handle all the applications. We are introducing 'application periods' between October 2014 and January 2016 in which firms with interim permission must apply to us if they want to be considered for authorisation.

We are considering an early application period for firms that want to become principals of appointed representatives. We will publish more information about this along with a timetable towards the end of March, and we will write to all firms that have registered with us for interim permission by 1 May with details.

Introduction

- 2.1** Firms (including individuals) carrying on regulated financial services activities in the UK must be authorised by the FCA unless they qualify for an exemption or an exclusion.
- 2.2** For an activity to be a regulated activity it must be carried on 'by way of business'. If an individual who meets our criteria for being classified as an agent carries on an activity for their principal firm's business, and not their own, the individual may not require authorisation for it.
- 2.3** An authorised firm will be granted either full or limited permission depending on the activity it undertakes.
- 2.4** The most common way a business can qualify for an exemption is to become an appointed representative of an authorised person (which includes firms). This means the authorised person (called the principal) takes responsibility for the regulated activities carried on by the appointed representative.
- 2.5** This chapter includes updates on interim permission and our plans to authorise consumer credit firms, and feedback on the questions in the consultation on issues relating to authorisation or exemption.

Interim permission

- 2.6** If a firm that currently holds an OFT licence wants to continue to carry on consumer credit activities from 1 April 2014³ it must:
- Register with us by 31 March 2014 for interim permission to do so, or
 - If the firm obtains a standard OFT licence between 18 March 2014 and 31 March 2014 it must register by 14 April 2014; if such a firm registers after 1 April, they can obtain interim permission from the date of their registration.
- 2.7** Interim permission continues until we determine a firm's application for authorisation, if it applies within its 'application period' (see below), but we have the right to remove interim permission at any stage if we determine that the firm is no longer fit to hold it.
- 2.8** If a firm has not registered for interim permission by the deadline above, it will need to apply for authorisation from 1 April 2014 to carry on the activities for which it needs to be authorised. It will not be able to carry on those regulated activities unless and until authorisation is granted.

Applying for authorisation

- 2.9** To become authorised, firms apply to us using forms that we make available online. More details on our authorisation process, as well as help and guidance on what it means for firms, are on our website.⁴
- 2.10** When deciding whether to grant a firm authorisation, we assess whether it meets our 'threshold conditions'. We set out below the comments we received about this and our response.
- 2.11** We cannot consider applications for authorisation for consumer credit activities before 1 April 2014.
- 2.12** We will make an authorisation pack available before firms need to apply for authorisation. This will include information to help firms prepare for and complete their application through the online form.

Application periods

- 2.13** As we are expecting many thousands of applications for authorisation, we must stagger this process to ensure we can handle the applications in a streamlined manner and ensure that decisions are made within our usual service levels.
- 2.14** We are therefore introducing 'application periods', giving firms with interim permission a three-month window in which they must apply to us, otherwise their interim permission expires at the end of the application period. The first of these will run from October 2014.

³ Third party tracing agents, currently licensed for debt collection that carry on tracing but take no other steps to collect debts and carry on no other regulated activities, will not need to be authorised from 1 April 2014.

⁴ <http://fca.org.uk/firms/firm-types/consumer-credit>

- 2.15** We aim to publish the timetable for these application periods towards the end of March and we will write to all firms that have registered with us for interim permission by 1 May with details of the particular application period for that firm.
- 2.16** Firms will generally be allocated to an application period based on the category of business notified to us when they registered for interim permission. In cases where firms indicated that they undertake more than one category of business, we will make clear which application period applies.
- 2.17** There will be a few exceptions or variations to this process and further details about these will be published with the timetable.
- 2.18** We intend to work with large groups, holding multiple consumer credit licences, to minimise operational impact for them. Where possible, we will try to allocate the same application period to all interim permission holders within that group.
- 2.19** Respondents to CP13/10 were concerned that firms cannot become appointed representatives from 1 April 2014 as there will be no authorised principals then.
- 2.20** We are therefore proposing offering the choice of an earlier slot for firms that want to become principals. We will seek to prioritise applications where firms have indicated as part of the interim permission process that they want to become a principal, subject to resource constraints. We will publish further information about this additional option in March with the timetable.
- 2.21** Firms that seek to take on new activities, outside the scope of their interim permission, will be able to apply for authorisation at any time from 1 April onwards.

Authorisation fees

- 2.22** We published our proposals on authorisation fees for consumer credit firms, and the fees structure following authorisation, in our October 2013 CP on regulatory fees and levies.⁵ In light of feedback from firms, we issued revised proposals on authorisation fees in a supplement to CP13/14 in December 2013. We will publish our feedback on the consultation responses in our CP on periodic fee rates for 2014/15, which we will publish at the end of March.⁶

Threshold conditions

- 2.23** In Table 3.1 of CP13/10 we set out the current threshold conditions⁷ for authorisation, with an explanation and our proposed approach for categorisation of activities.
- 2.24** In the consultation we asked:

Q1: Do you have any comments on the way our threshold conditions are being applied to consumer credit firms and/or the updates to our Handbook rules?

⁵ From the Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013

⁶ The March CP will include our proposals for consumer credit periodic fees. Respondents to CP13/14 have raised issues on lower fees for smaller firms and for ancillary activities that do not generate income.

⁷ From the Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013.

Responses to the consultation

- 2.25** Most respondents commented on the categorisation of activities which were set out by the Government and summarised in CP13/10. The Government has now finalised the categories which are summarised in Table 2.1. This includes deciding that local authorities will only need a limited permission for lending within the scope of the Consumer Credit Directive (CCD).
- 2.26** The contents of this table are not a comprehensive list of the regulated activities. To determine whether particular activities are lower or higher risk, firms should review the legislation⁸ or take legal advice.

Table 2.1 – Categorisation of activities

Limited permission activities	<p>Consumer credit lending (where the main business is selling goods or non-financial services and there is no interest or charges) – this excludes hire-purchase and conditional sale</p> <p>Consumer hire</p> <p>Credit broking (where the main business is selling goods or non-financial services and broking is a secondary activity)</p> <p>Credit broking in relation to the Green Deal</p> <p>Not-for-profit debt counselling and debt adjusting</p> <p>Not-for-profit credit information services</p> <p>Local authorities (lending within the scope of the CCD)</p>
Higher-risk activities	<p>Consumer credit lending (including personal loans, credit card lending, overdrafts, pawnbroking, hire-purchase, conditional sale, etc)</p> <p>Credit broking (including introducing consumers to lenders as a main business activity)</p> <p>Debt adjusting</p> <p>Debt counselling</p> <p>Debt collection</p> <p>Debt administration</p> <p>Credit information services</p> <p>Credit reference agency services</p> <p>Peer-to-peer lending</p>

- 2.27** We received a number of responses about paying an insurance premium in instalments. This is likely to be a credit agreement for the purposes of the CCA (because a financial accommodation is being provided). There is an existing CCA exemption for credit agreements repayable in four or fewer instalments within 12 months without interest or other charges, which is being carried forward into the new regime. The Government announced in December that it intends to

⁸ See COND 1.1A.5A for details of the relevant legislation.

consult on the pros and cons of possibly extending this exemption to cover monthly instalments, without interest/charges.

2.28 We also received several responses that:

- queried when we look for a firm's 'mind and management' to be in the UK, how we will approach 'effective supervision' and 'appropriate resources'
- asked for clarification about how we will assess business plans against 'market norms'
- suggested rewording part of the text in 2.7.8G in the Threshold Conditions sourcebook (COND) relating to business models.

Our response

It is for firms to show us that the way in which their business is organised makes them capable of complying with the threshold conditions relating to 'location of offices' and 'effective supervision'. If the business applying for authorisation is an overseas firm which needs to be authorised, rather than a UK subsidiary or branch, this can make it difficult for us to assess its business model, resources and suitability, both at authorisation and on an ongoing basis.

We set out in CP13/10 when overseas firms will not need to be authorised. Other overseas firms will need to be authorised, and in most cases will need to have a UK establishment. We recognise that this requirement may force some firms to make significant changes to their business models. While we will look at each application on a case-by-case basis, this remains one of our key requirements, both at authorisation and in continuing supervision thereafter.

Given the wide variety of firms that apply to us, we do not think it is possible to set out how we assess what are appropriate resources in each case. When we assess against market norms and a business plan shows market conformity, this will not necessarily meet our threshold conditions if we believe it will not produce the right outcomes for consumers.

None of these responses has persuaded us to change our guidance in COND.

Approved persons

2.29 As part of the authorisation process firms will have to identify the individuals who will be performing controlled functions and so must be approved by the FCA. In CP13/10 we consulted on a number of proposals relating to the application of our approved persons regime to consumer credit activities.⁹ These included extending the client asset operational oversight function to debt management firms and not-for-profit debt advice bodies that hold over £1m of client money.

2.30 In the consultation we asked:

⁹ Our proposals were set out in paragraphs 3.8 and 3.9 of CP13/10: <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp13-10>

Q2: Do you agree with the updates to our draft Handbook rules for approved persons for consumer credit firms?

Responses to the consultation

- 2.31** Overall there was qualified support for our proposals. While a number of respondents fully supported our approach to allocating responsibility for specified controlled functions to approved individuals in firms carrying on credit activities, a number questioned the proportionality and benefit.
- 2.32** There was strong support, from a proportionality perspective, for our non- or limited application of certain controlled functions to sole traders, and support also for us not applying a customer function to credit firms.
- 2.33** A couple of respondents considered that the compliance function should be extended to firms carrying on higher-risk credit activities and, in particular, HCSTC providers. It was suggested that an approved compliance officer could have specific responsibility for, among other matters, ensuring appropriate affordability assessments are undertaken before granting such loans.
- 2.34** There was strong support from a number of respondents for our proposal to extend the application of the client asset oversight function to large not-for-profit debt advice bodies that hold significant amounts of client money. A number of respondents considered that we should also extend the function to all profit-seeking debt management firms, including small firms. It was suggested that smaller debt management firms pose a greater risk of non-compliance with our client asset requirements.
- 2.35** Some respondents considered that we should postpone the introduction of our proposed approved person requirements given the degree of uncertainty created by our consideration of the Parliamentary Commission on Banking Standards (PCBS) reforms, which include the introduction of a new senior persons regime / certified persons regime (SPR/CPR) for deposit takers.¹⁰
- 2.36** A few respondents considered that our cost benefit analysis did not give sufficient weight to the likely cost and burden for credit firms of recruiting and training approved persons. It was also suggested that we should make some allowance (in terms of the information requested) when considering the approval of individuals already approved for governing functions for other FSMA-regulated activities.
- 2.37** A number of respondents said that they would welcome more information from us on aspects of our approved persons regime and, in particular, whether the same individual in a (small) firm can be approved for both a governing function and the money laundering reporting officer (MLRO) function.

Our response

Compliance function

We understand why some respondents suggested that we might extend the compliance function to HCSTC providers but we consider that our current package of measures for the regulation of such firms should address the risks identified.

¹⁰ Retail and investment banks, building societies and credit unions.

We also consider that in this sector it is more appropriate for compliance to be an executive responsibility resting with those individuals approved for the firm's governing functions. We have differentiated between our approach to this sector and the debt management and credit repair sectors (where we are requiring individuals to be approved for the compliance function) because debt management and credit repair firms are involved in activities with a significant 'advice' element and we expect the person approved for the compliance function to take responsibility for ensuring that high-quality advice¹¹ is given.

Client asset operational oversight function

One of the principles for the consumer credit transfer to the FCA is that our requirements should be proportionate. We have taken this into account in applying the client asset operational oversight function only to large debt management firms. However, many of the requirements we are applying to debt management firms to protect client money do apply to all debt management firms, regardless of size.

Our client assets regime is also designed to help protect client money in the case of firm insolvency (rather than fraud) and the impact on customers is likely to be greater when a large firm fails.

SPR

We have decided to proceed with implementing our approved persons proposals as set out in CP13/10. Although the Financial Services (Banking Reform) Act 2013 introduces a new SPR/CPR regime, this is limited in application to UK deposit takers.

We will not be consulting on our SPR proposals until later in 2014 and we do not want to postpone introducing requirements for individuals in credit firms to take responsibility for key functions. We want all credit firms to have the right people responsible for important functions, to ensure that consumers are protected.

Limiting costs and burdens on firms

We would expect responsible and compliant firms to already have people in place, with the required skills and experience and with responsibility for matters that fall within the scope of the controlled functions. For example, we would expect debt management firms to already have individuals responsible for the firm's compliance with relevant regulatory requirements, including oversight of clients' money.

If people are already approved for significant influence functions (SIFs), or have been within the last six months and have no new disclosures to make, they can submit an abbreviated individual application form, not requiring them to repeat details already disclosed in their previous application. However, we expect every applicant for approval to meet our 'fit and proper' test for the specific controlled function applied for, and we review each application on its own merits.

In a small firm, a single person (provided that he or she has the relevant competencies) can take responsibility for a number of controlled functions, including a governing function and the money laundering reporting function. This person would normally be a director or partner in the firm.

¹¹ We are not applying a customer function to debt management or credit repair firms.

Alternatives to authorisation

2.38 In Chapter 3 of CP13/10 we consulted on our draft rules covering three potential alternatives to becoming authorised:

- becoming an 'appointed representative' of an authorised firm
- satisfying the criteria to be an 'exempt professional firm'
- being a 'self-employed agent'.

2.39 In the rest of this chapter we summarise the feedback we received on our proposals and give our response.

Appointed representatives

2.40 We consulted on our draft rules relating to appointed representatives, including our proposal to permit debt collector appointed representatives to enter into multi-principal arrangements. We also mentioned that the Government had extended the option to be an appointed representative to lenders that provide interest-free credit without any other charges.

2.41 In the consultation we asked:

Q3: *Do you have any comments on the updates to our draft rules regarding appointed representatives of consumer credit firms?*

Responses to consultation

2.42 The majority of respondents were supportive of our proposals for appointed representatives, considering them to be proportionate and reasonable.

2.43 There was general support for the position that the option of being an appointed representative should not be extended to credit reference agencies (CRAs), and for extending the multi-principal option to third party debt collectors. However, a few respondents were opposed to the appointed representative option being extended to any firm carrying on 'higher-risk' credit activities.

2.44 Some respondents considered that the appointed representative option would not be available to many firms (in particular smaller ones) that wanted to take advantage of it as there was insufficient incentive for the majority of consumer credit firms to act as principals.

2.45 Some respondents raised a number of specific concerns about the implications of our appointed representative proposals for second-charge brokers, as in the longer-term they will be subject to a different regime reflecting the Mortgage Credit Directive (MCD).

2.46 A particular concern was that brokers/intermediaries broking second charge loans (but not first charge) will initially be able to act as appointed representative for multiple principals but may subsequently have to fundamentally restructure when the longer-term regime for 'second charge' broking comes into effect if it limits them to single-principal arrangements.

2.47 A couple of respondents proposed that the option of becoming an appointed representative should be extended to P2P lending platforms.

- 2.48** One respondent proposed that we should require all lead generators operating in the debt management sector to be appointed representatives of debt management firms.

Our response

It is the Government's and our intention to make the lower-cost appointed representative option available to as many firms as possible. Where appointed representatives are carrying on higher-risk credit activities we would expect their principals to have appropriate systems and controls to mitigate the associated risks.

Availability of principals

Based on our discussions with credit industry representatives, we understand that a number of firms wish to act as principals, with some willing to act as principals for multiple appointed representatives. However, ultimately it is a commercial decision for a firm whether or not to act as a principal. Some firms that might want to be appointed representatives may not be able to identify a suitable firm willing to act as their principal. These firms will need to consider whether they want to apply to be authorised firms.

Debt collectors

Having considered the responses to our consultation, we are extending the multi-principal option to appointed representative third party debt collectors. However, if we find evidence that they are not being sufficiently transparent and/or not exercising appropriate forbearance in their dealings with debtors, we may review our position.

Broking second charge loans

The single-principal approach is a long-established feature of our mortgage regime and we have no evidence of the market having significant concerns about our approach. It was put in place to deal with concerns about fraud and oversight and because of the broadly similar nature of mortgage products.

We would expect that second charge intermediaries will have regard to the likely impact of the longer-term regime and would structure their business arrangements accordingly.

Firms can enter into single-principal arrangements for some regulated markets (for example, mortgage advice) and multi-principal arrangements for others (for example, broking unsecured credit).

P2P lending platforms

The Government has now extended the option to be an appointed representative to P2P lending platforms carrying on the new regulated activity of operating an electronic system in relation to lending.

Lead generators

Being an appointed representative of an authorised firm can only ever be an option not a requirement. While the option of being an appointed representative of an authorised debt management firm may be open to, and appropriate for, some lead generators, this will only be the case where the lead generator is carrying on a credit-related regulated activity (for example, regulated debt

counselling). There is no requirement for a firm to be either authorised or an appointed representative if it is not carrying on any regulated activity.

Exempt professional firms

- 2.49** A professional firm that is a member of a designated professional body (DPB) can carry on certain regulated activities under the regulation and supervision of its DPB, rather than the FCA, if it fulfils certain criteria set out in FSMA Part 20. These firms are known as exempt professional firms (EPFs). The Government has decided that EPFs should be able to carry on certain consumer credit activities if their DPB puts in place appropriate rules and supervisory arrangements.
- 2.50** We consulted on giving DPBs an option to apply an equivalent transitional arrangement to the one that will apply to authorised professional firms from 1 April 2014. This was intended to give DPBs additional time after 1 April 2014 to complete their preparations for the supervision of their members' consumer credit activities. We also outlined alternatives if professional firms did not meet the criteria to be an EPF.

Responses to consultation

- 2.51** The majority of DPBs were content that FSMA Part 20 could represent an appropriate way to deal with consumer credit activities that are incidental to and arise in the context of providing professional services.
- 2.52** Some DPBs expressed concern about applying the EPF regime to consumer credit. This was mainly regarding the Part 20 tests, including incidentality. Rules made by a DPB must be designed to secure that, in providing a particular professional service to a particular client, a member must carry on only regulated activities that arise out of, or are complementary to, the provision by the member of that professional service to the client.
- 2.53** DPBs in general sought clarification about the timing and certainty of consumer credit rules, including the carrying across of OFT guidance into rules, as this affects the rules they are required to put in place. DPBs were also concerned that a prescriptive rules-based approach would not be consistent with their own approach to regulation.
- 2.54** A number of DPBs were interested in other aspects of the regime, including its application to IPs (see below), payment by instalments and AML supervision.

Our response

We have discussed the application of Part 20 with and provided additional support to various DPBs and their members to assist with their preparations. This includes the DPBs' rule-making process and the implementation of rules in accordance with the proposal in our consultation. We are aware of the challenges of the process and timetable and will continue to work closely with the DPBs to deliver a proportionate and effective regulatory regime.

Insolvency practitioners

- 2.55** Some DPBs have IP members. In CP13/10, we referred to the Government's proposal to exempt IPs whose activities are limited solely to certain specified matters. Since then the Government has made further statutory changes relating to IPs.¹² The exemption has now been changed to an exclusion covering activities undertaken by a person acting as an IP for the purposes of section 388 of the Insolvency Act 1986¹³ or in relation to certain activities¹⁴ undertaken in 'reasonable contemplation' of the IP being appointed to act in this capacity.
- 2.56** The Government's change to the legislative framework for IP activities reflects concerns expressed by members of the professions during the consultation process. We expect that the change from an exemption to an exclusion will be largely welcomed by IPs and that professional firms who genuinely operate within the scope of the exclusion will benefit. Where firms carry on consumer credit regulated activities that do not fall within the scope of the IP exclusion, they will need to consider their overall business model and ensure they obtain the correct permissions.

Self-employed agents

- 2.57** We consulted on draft perimeter guidance which set out the factors that we consider relevant in deciding whether a person is treated as carrying on their own business (in which case they may require authorisation unless an exemption or exclusion is available) or whether they are carrying on their principal firm's business as an agent (in which case they will not require authorisation).
- 2.58** In the consultation we asked:

Q4: Do you have any comments on the criteria that we are proposing a person would have to fulfil to be a self-employed agent of a principal firm (as set out in Appendix 2)?

Responses to consultation

- 2.59** The majority of respondents to our consultation considered our proposed criteria to be both appropriate and proportionate. In particular, there was support for the change we proposed to allow individuals who are paid commission by the principal to be agents.
- 2.60** However, some concerns were raised and/or clarification sought on the following:
- A couple of respondents wanted to know whether the option to be a self-employed agent was limited to the home-collected credit and mail order sectors or whether it extended to anyone carrying on a credit-related regulated activity who meets our criteria.

¹² Under the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014.

¹³ Carrying on debt counselling, debt adjusting, debt collection or credit information services in relation to Debt Arrangement Schemes in Scotland and debt management plans is not acting as an IP for the purposes of section 388 of the Insolvency Act 1986 – and consequently not within the scope of the Government's exclusion for IPs.

¹⁴ The exemption for IPs was amended to an exclusion by SI 2014/366. For acting as an IP, the exclusion covers the non-credit activities for which IPs were previously exempt, plus debt counselling, debt adjusting, debt administration, debt collecting and credit information services. For acting in reasonable contemplation of such an appointment, the exclusion only covers debt counselling, debt adjusting and credit information services.

- Some respondents (predominantly but not exclusively from the debt collection sector) considered that our requirement for an 'agent' to only be able to work for one principal is too restrictive.
- Some consumer groups raised concerns about our ability to effectively monitor that principal firms are exercising appropriate supervision/controls over the conduct of their agents. They had concerns about the level of forbearance currently exercised by some individuals involved in the recovery of outstanding debts and a lack of transparency about the firm they are representing.

Our response

Scope of the 'agent' option

It was our intention that the 'agent' option should extend to individuals carrying on any credit-related regulated activity that meets our criteria, but this was not reflected in the draft CONC 14.1.1R, which limited the option to those carrying on consumer credit lending or consumer hire. So we consulted in QCP13/18 on amending the scope of CONC 14.1.1R to extend the application of the agent option to all credit-related regulated activity.

No objection was raised by respondents and CONC 14.1.1R has been amended accordingly.

Limiting the agent option to individuals working for single principals

We are not limiting individuals to only being able to work for one principal firm but, if an individual is providing services to or on behalf of a number of different firms, it is likely to be carrying on its own business rather than carrying on as agent the business of its principal (and as such will need to be authorised by the FCA or exempt). This does not represent a departure from the current regulatory position. However, the credit transfer has highlighted that this was not well understood.

Individuals that do not meet our criteria to be an agent, because they provide services to or on behalf of a number of firms, may want to consider taking up the lower-cost option of being an appointed representative of multiple principals when and if that option is available to them.

Monitoring the conduct of agents

As set out in the consultation, one of our criteria for being an agent of a principal firm is that the principal accepts full responsibility for the conduct of its agent when it is acting on the firm's behalf in the course of the firm's business.

We will hold firms fully accountable for misconduct by their agents during the course of carrying on the firm's business. We have also introduced an additional rule (CONC14.1.4R(1)) requiring firms to establish, implement and maintain adequate policies and procedures to ensure the compliance of their agents with the firm's regulatory obligations.

3 Supervision and regulatory reporting

We will supervise firms from 1 April in line with our general supervisory approach and we will require firms to report information to us on a regular basis, with more detailed requirements for higher-risk firms.

Our final rules are mainly unchanged apart from removing two data items from our initial product sales data proposals (car ownership and household income).

Introduction

- 3.1** Chapter 4 of CP13/10 provided information about how we will supervise firms and invited comments on our detailed proposals for the data we will collect through regulatory reporting. The draft rules were set out in Appendix 2.

Our supervisory approach

- 3.2** Our overall aim is to ensure that providers of consumer credit or related services have sustainable and well-controlled business models, underpinned by a culture based on doing the right thing for their customers.
- 3.3** To achieve this, we will initially be delivering a hybrid supervisory approach to consumer credit firms during the interim permission period. We will focus on the way that firms treat their customers by:
- Conducting firm-specific visits to the largest firms within certain sub-sectors, including debt management, debt collection, home-collected credit, HCSTC, pawnbrokers and credit card issuers. These visits will be similar to our Firm Systematic Framework (FSF) – or ‘Pillar 1’ – currently in place for all FSMA-regulated firms and through which we assess whether a firm is being run in a way that results in the fair treatment of customers, minimises risks to market integrity and does not impede effective competition. We will place greatest initial emphasis on focused firm visits.
 - Dealing with events across all sub-sectors (similar to ‘Pillar 2’, but with a lower risk tolerance to deal with a greater number of events).
 - Conducting targeted thematic work (‘Pillar 3’).
- 3.4** As we do so, we may find issues that we need to address and we will take appropriate action where necessary. We will also be reviewing financial promotions to make sure they are fair,

clear and not misleading, as well as reviewing relevant contract terms to ensure they are not unfair.

- 3.5** As firms go through the full authorisation process, we will bring them in line with our current three-pillar supervision model. Further details about our supervisory approach can be found in CP13/10, FSA CP13/7 and in the Journey to the FCA.¹⁵
- 3.6** As stated in CP13/7, we will continue to work closely with Local Authority Trading Standards Services (LATSS) and the Department of Enterprise, Trade and Investment in Northern Ireland (DETINI), who will continue to have a role in enforcing the remaining provisions of the CCA.

Reporting requirements

- 3.7** In the consultation we asked:

Q5: Do you have any comments on our proposed regulatory reporting regime?

Responses to consultation

- 3.8** Most respondents were generally supportive of our proposals. They mainly agreed that regulatory reporting is necessary to help us monitor and supervise the consumer credit industry effectively, although some did not consider that our proposals were proportionate and in particular did not differentiate (in terms of the data required) between different sizes of business or different levels of risk. The cost and resource implications of systems reconfiguration and ongoing reporting were also raised by some respondents.
- 3.9** Some respondents suggested that we should collect information on the amount of commission that debt management firms pay to lead generators.
- 3.10** Several respondents asked for clarification of what should be included in 'debt management plans ending early', and some were uncertain about when their first report would be due and the period that should be covered.
- 3.11** Some organisations requested that aggregate data, including data split by postcode regions, is published on a periodic basis so that they can focus resources accordingly.

Our response

Given the support we received, we are proceeding with the rules largely unchanged.

Proportionality

We propose to adopt a simplified approach to regulatory reporting that focuses on key pieces of data that are generally common across the different sectors of the credit market, with some limited sector-specific data elements. A regime tailored more specifically to each type of activity would involve a very long, complex set of rules that would be hard to maintain, understand and implement.

¹⁵ <http://www.fca.org.uk/your-fca/documents/fsa-journey-to-the-fca>

We acknowledge that our reporting regime places a new requirement on firms that are not already regulated by us. However, we believe that our proposals are proportionate and should not cause undue burden on the industry. The amount of information we are requesting is low when compared to other FCA-authorized firms and we have limited the burden on smaller firms (with annual revenue from credit-related regulated activities of £5m or less) by only requiring annual reporting.

Firms with limited permission will only be required to complete one short return annually.

Commission paid to lead generators

While we can see the potential benefit in obtaining information about commissions paid to lead generators, we do not believe that the regulatory reporting regime is the most efficient way of obtaining such data and so we will not be amending our proposals.

Debt management plans ending early

We understand that there are a number of reasons why a debt management plan could end before the original term agreed, and that not all of those reasons are indicative of potential harm to customers. However, we consider that, in many instances, a debt management plan ending early is likely to be symptomatic of an unaffordable plan. Therefore, we will proceed as planned and expect firms to record all debt management plans that end early in the relevant field in form CCR004.

First reports due by firms

The reporting regime starts on 1 October 2014 and applies once a firm is fully authorised. Data submitted in a firm's first report should not include data from before it was fully authorised.

For example: A HCSTC lender, with annual revenue of less than £5m from credit-related activity and with an accounting reference date of 1 May, which becomes fully authorised on 1 February 2015, will be required to submit its first report under Regulated Activity Group 12 (SUP 16.12) within 30 business days of 1 May 2015 covering the period from 1 February 2015 to 1 May 2015.

Its first quarterly PSD report (SUP 16.11) will be required within 20 business days of 30 March 2015 and should cover sales data from 1 February 2015 to 30 March 2015.

Publishing aggregated data

We will give this consideration in the context of our long-term data strategy.

3.12 In the consultation we asked:

Q6: *Do you agree with our proposals to collect product sales data on high-cost short-term lending and home collected credit?*

Responses to consultation

- 3.13** Most respondents were generally supportive of our proposals on PSD and agreed that they are necessary to help us effectively monitor and supervise the high-risk lending activities of HCSTC lenders and home-collected credit providers.
- 3.14** However, a significant number of respondents indicated that most lenders do not currently record details about customers' total household income or car ownership. Respondents did not consider these details to be relevant to a decision to grant credit, and so raised concern, in relation to the Data Protection Act (DPA), as to whether firms could justify asking for them.
- 3.15** Some respondents suggested that we should:
- be collecting more data than we proposed, including indicators of financial distress at the time the credit is granted and post-sale performance information
 - generally be mindful of the DPA because we are obtaining personal data that must not be processed unless the individual concerned has given permission
 - maintain or be given access to a real-time database of information about loans, which would enable us to more effectively monitor business practices, for example, in relation to breaches of the rollover rules.

Our response

We are proceeding with our rules on PSD, but we have listened to respondents and have amended our requirements in relation to two specific elements of data.

Information about total household income and car ownership

We agree with the responses and have removed these two elements from the specific reporting fields for HCSTC lenders and home-collected credit providers.

Additional product data

Our general reporting requirements will require firms to provide information including the total number and value of loans and the amount of arrears. This will provide us with high-level information about the performance of firms' loan books.

We agree that additional information could help us to identify individual instances of irresponsible lending. However, there are many different factors that firms should take into account when making lending decisions. We do not consider that the PSD requirements could, without a significant degree of additional complexity, be enhanced to provide us with sufficient evidence to accurately assess the quality of lending decisions.

We will not, therefore, be increasing the amount of information requested from firms at this time, although we will keep this under consideration in the future.

Data Protection Act

Similar questions about data protection arose last year in the context of our PSD proposals related to the Mortgage Market Review.¹⁶ At that time we contacted the Information Commissioner who did not identify any data protection issues, subject to our compliance with necessary data protection requirements.

One of the conditions for processing personal data is that the processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract. Our rules will impose that legal obligation.

We believe that sharing PSD with us will be fair processing of personal data as it should be reasonably obvious that a regulated firm may need to disclose that data to its regulator. Firms may wish, as they move to FCA regulation, to update the information they give to their customers or potential customers, to refer to the possibility that the firm may be required to pass customers' personal data to the FCA.

Real-time data

Real-time monitoring of sales data is not currently part of our planned supervisory approach.

However, as explained in Chapter 5, we are working with the industry to overcome barriers to real-time data sharing.

¹⁶ <http://www.fca.org.uk/your-fca/documents/policy-statements/ps13-12-mortgage-market-review>

4 Conduct rules for all consumer credit activities

From 1 April 2014 all consumer credit firms must comply with our high-level conduct standards, such as our Principles for Businesses and relevant parts of our systems and controls rules and general provisions.

We are carrying across standards from the CCA regime and OFT guidance into our rules and guidance.

We have made some changes to our proposals based on the feedback we received, such as allowing a specific transitional period for financial promotions in certain catalogues and clarifying that debt management firms should not allocate more than half the money received from customers in debt management plans to meeting their fees and charges.

We have also reviewed the boundary between rules and guidance, and amended some of the wording to align it more closely with the relevant OFT guidance.

Introduction

- 4.1 Chapter 5 of CP13/10 invited comments on our proposed conduct of business rules for consumer credit firms (in Appendix 2 to CP13/10), other than in relation to HCSTC and P2P platforms.
- 4.2 This chapter should be read in conjunction with Annex 5, which sets out in a table the main feedback on the draft CONC provisions and our response on each. The key elements are summarised below, and the final CONC rules are in Appendix 1.

Carrying across CCA rules

- 4.3 Table 5.2 in CP13/10 sets out the CCA provisions that are being repealed and their proposed equivalents in the FCA Handbook.
- 4.4 We received feedback in relation to the following:
 - s51A (provision of credit card cheques)
 - s55A (pre-contractual explanations)

- s55B (assessment of creditworthiness)
- s74B (unauthorised overdrafts)
- s81 (appropriation of payments)
- SI 1977/330 (credit references)
- distance marketing and cancellation

Our response

We have made a number of changes (see Annex 5). In particular:

- We have moved the provisions on credit card cheques into CONC 2.3.
- We have clarified at CONC 6.3 that information on significant overrunning on a current account (i.e. unauthorised overdrafts) must be in writing.
- We have reduced the time limit in CONC 9 on the obligation on CRAs to notify firms about corrected information on credit files.
- We have clarified in CONC 11 that the distance marketing rules apply in relation to consumers, and do not extend to consumer hire agreements.

Carrying across OFT guidance

- 4.5** Paragraph 5.9 of CP13/10 listed OFT guidance that we were proposing to carry across into CONC rules/guidance and invited feedback. We confirmed our intention to substantially replicate the guidance in a way that meant that firms already complying were unlikely to need to change their behaviour.

Q7: *Do you have any comments on how we propose to carry across CCA and OFT standards, in particular in the areas highlighted above?*

- 4.6** Most respondents were broadly supportive of our proposals and felt that they adequately transposed existing standards. However, there were a number of concerns:
- Some respondents argued that all OFT guidance should be transposed as guidance not rules (see below).
 - Some accepted the principle of turning guidance into rules, but felt that certain provisions were more suited to guidance.

- Some argued that aspects went further than OFT guidance, and were inconsistent with industry codes, such as the Lending Code.
- Some felt that our wording should be aligned more closely with the wording in the OFT guidance, to minimise scope for ambiguity and ensure no substantive change of application.
- Others argued that key elements of OFT guidance had been left out, which reduced consumer protection or hindered interpretation.

4.7 In some cases, respondents (particularly consumer organisations) argued that we should have gone further.

Our response

The general issues relating to carrying across OFT guidance into FCA rules are considered in the next section.

Having analysed the responses, we accept that some of the drafting can be improved. In particular, in some places this inadvertently went beyond or differed from the equivalent OFT guidance, or did not include relevant context. We have looked to remedy this. More generally, we accept that a greater alignment with the wording of OFT guidance is desirable, in the interests of regulatory certainty and to minimise burdens on firms who will be familiar with the current regime.

We set out below and in Annex 5 our response on each of the main areas of feedback, and the changes we have made to CONC in light of these.

In general, our approach has been to carry across OFT guidance in substantially the same form and with substantially the same effect as previously. Where we have gone further (e.g. in relation to HCSTC) this was based on a detailed assessment and cost benefit analysis.

We will keep under review the possibility of further changes in light of experience of supervising the credit market from 1 April. We are also committed to undertake a post-implementation review.

Converting OFT guidance to FCA rules

- 4.8** Some industry respondents criticised the principle of converting OFT guidance into FCA rules (although consumer representatives were strongly supportive of the need for binding requirements).
- 4.9** In particular, some respondents argued that OFT guidance merely sets out the OFT's view on how CCA compliance can be achieved, and as such is purely advisory. They suggested that firms are not required to take it into account, and may not have factored it into their systems and procedures. Having to do so now may be impracticable within the timescales, and could entail significant costs. It could also unnecessarily limit firms' discretion going forward.

Our response

We have converted OFT fitness guidance into rules where we consider it necessary or appropriate. In particular, where OFT guidance lays down minimum standards, with a presumption that failure to comply could lead to licensing action, and the guidance is clear and unambiguous, we believe it is appropriate to make it into binding rules.

In addition, some OFT guidance elaborates on the statutory requirements, by indicating how these apply, either generally or in particular sectors. For example, in implementing aspects of the CCD, the Government took a conscious decision to limit the legislation to the minimum necessary to ensure transposition, and leave to OFT guidance the task of fleshing this out and giving it practical application. This was on the basis that, unlike legislation, OFT guidance could be changed relatively easily in light of market developments and evidence of harm to consumers. That also applies to FCA rules, subject to consultation and cost benefit analysis.

On the other hand, we accept that some OFT guidance merely sets out illustrative examples of factors that may be relevant (but without suggesting these should always apply), or is drafted more in terms of 'best practice' than minimum standards. We consider that this is more appropriate as FCA guidance, either on specific rules or in relation to the Principles for Businesses and in particular 'treating customers fairly'.

We have, however, reviewed the boundary between rules and guidance, and made a number of adjustments, as set out in Annex 5. In particular we have downgraded the following from rules to guidance:

- 4.3.2R (now 4.2.2G) – Firms should consider whether it is necessary or appropriate to provide pre-contractual explanations for agreements which are currently excluded from s55A CCA. In particular, they should consider highlighting the principal consequences of not keeping up repayments.
- 4.3.4R (now 4.2.4G) – Pre-contractual information and explanations should take into account any preferences expressed or information provided by the customer where the firm would in principle agree to lend on such terms.
- 4.3.6R (now 4.2.6G) – The pre-contractual explanation should enable the customer to make a reasonable assessment of whether they can afford the credit and to understand the key associated risks.
- 4.2.7R (now 4.2.7G) – In deciding on the level and extent of explanations, firms should consider, to the extent appropriate to do so, relevant factors including those specified.
- 5.2.2R(2) (now 5.2.3G) – The extent and scope of the assessment of creditworthiness or affordability should be dependent on and proportionate to relevant factors which may include one or more of those specified.
- 5.3.4R (now 5.3.3G) – Firms should take adequate steps, insofar as it is reasonable and practicable to do so, to ensure that information relevant to the creditworthiness or affordability assessment is complete and correct.

Gold-plating the Consumer Credit Directive

- 4.10** A related argument was that converting OFT guidance into rules (in particular in relation to affordability and explanations) amounts to ‘gold-plating’¹⁷ the CCD, in breach of maximum harmonisation. It was also suggested that applying rules as guidance to excluded agreements could breach the CCD.

Our response

We do not accept that our proposed rules infringe CCD harmonisation. In some cases they merely carry across existing CCA provisions, which the Government has decided are in accordance with the CCD. Where OFT guidance is being converted into rules, we are satisfied that this implements the CCD or at least accords with the discretion afforded to Member States under the Directive.

For example, the EU Commission has stated, in relation to CCD transposition, that Member States have ‘a margin of manoeuvre’ about how to comply with the creditworthiness check and ‘may adapt their requirements’ in order to promote responsible lending, and recital 26 of the CCD refers to Member State authorities ‘giving appropriate instructions’ to creditors. Similarly, the final sentence of article 5(6) of the CCD makes clear that Member States can adapt the adequate explanations requirements in relation to the type of credit offered.

We have, however, clarified that the provisions on creditworthiness and affordability do not apply to overrunning (i.e. unauthorised overdrafts).

Proportionality

- 4.11** Some respondents suggested that the proposed rules were unduly prescriptive and would limit firms’ discretion to do what is appropriate in the circumstances. They could also add unnecessary costs, particularly in areas where risks to consumers are low.
- 4.12** For example, where insurance or other services are payable by instalments, with no or insignificant credit charges, it was argued that it would be disproportionate to require detailed explanations or creditworthiness assessment and this could lead to products being withdrawn, to the detriment of consumers.

Our response

Our intention is to carry across CCA provisions and OFT guidance in the same, or substantially the same, form as currently. In some areas, that is necessary to ensure compliance with the CCD.

In particular, the CCD requires Member States to ensure that lenders assess creditworthiness, on the basis of sufficient information, obtained from the borrower where appropriate and from a credit reference agency where

¹⁷ ‘Gold-plating’ is a term used to describe regulation that goes beyond an EU directive.

necessary. We are not prescribing in our rules what is sufficient or necessary, but rather setting out principles in terms of affordability and sustainability, and including examples of the kinds of factors that lenders might take into account. This is no different from the approach adopted in the OFT's Irresponsible Lending Guidance.

For example, we state at 5.2.3G that the extent and scope of the assessment in any given case should be dependent on and proportionate to relevant factors, which may include one or more of those listed. And at 5.2.4G we state that a firm should consider what is appropriate in the circumstances based on, for example, the type and amount of credit and the risks to the consumer.

The risk of credit being unsustainable is likely to be greater, the higher the actual and potential costs of the credit are relative to the borrower's financial circumstances. The risks will be correspondingly lower if the credit is free of interest and charges, or there are either no charges payable on default or these are insignificant.

Similarly, we make it clear that, in deciding the level and extent of the required pre-contractual explanation, a firm should consider relevant factors including the type and amount of credit and the associated cost and risk to the customer.

Irresponsible lending

4.13 We received feedback in relation to the following:

- general principles for credit-related activities
- pre-contract disclosure and adequate explanations
- creditworthiness and affordability
- post-contract business practices
- arrears, default and recovery

Our response

The issues raised and our response are in Annex 5. In particular:

- We have clarified that, where practicable, firms should facilitate customers shopping around for credit by offering a quotation search facility – 2.4.3G.
- We have clarified, in line with OFT guidance, the requirements relating to pre-contractual explanations – 4.2.5R, 4.2.7G and 4.2.15R.
- We have clarified the extent of the obligation to obtain and verify information relevant to creditworthiness and affordability – 5.3.1G and 5.3.3G.

- We have clarified the circumstances in which it may be reasonable to take account of future income or expenditure – 5.3.1G.
 - We have clarified the guidance on the assessment of affordability for running-account agreements such as credit cards – 5.3.1G.
 - We have clarified the extent of the obligation post-contract to assess affordability and monitor repayments – 6.7.2R.
 - We have aligned the post-contract requirements more closely to relevant OFT guidance (reflecting code commitments) – 6.7.5R to 6.7.12R and 6.7.16R.
 - We have clarified the scope of the requirements relating to refinancing (this also impacts on the HCSTC provisions) – 6.7.17R to 6.7.19R.
-

Credit brokers and intermediaries

4.14 We received feedback in relation to the following:

- conduct of business (general)
- pre-contract business practices
- post-contract business practices

Our response

The issues raised and our response are in Annex 5. In particular:

- We have removed reference in 5.4 to assessment of creditworthiness and affordability as this falls to the lender.
-

Debt collection

4.15 We received feedback in relation to the following:

- arrears policies and procedures
- information on status of debts
- pursuing and recovering repayment
- use of CPA
- application of interest and charges
- contact with customers

- data accuracy and outsourcing

Our response

The issues raised and our response are in Annex 5. In particular:

- We have clarified our expectations around missed payments being made up within the original term of the agreement – 7.3.3G.
- We have elaborated the ‘breathing space’ provisions (minimum 30 days) – 7.3.12G.
- We have modified the requirements in relation to third parties acting on the lender’s behalf – 7.5.4R, 7.5.5R, 7.12.3G and 7.14.6R.
- We have clarified the rules applying generally to the exercise of CPA (this also impacts on the HCSTC provisions) – 7.6.1R to 7.6.8G.
- We have deleted the provisions at 7.8 of the draft rules relating to exercise of the right of set-off, as this is covered adequately by the Banking Conduct of Business sourcebook (BCOB).
- We have clarified the requirements around confidentiality and what this means in practice – 7.9.7R and 7.9.8G (moved from 7.3).
- We have modified the requirements relating to contact with customers and third parties – 7.9.7R to 7.9.12R and 7.12.3G.

Debt management

4.16 We received feedback in relation to the following:

- conduct standards for debt advice
- pre-contract information and advice
- financial statements and repayment offers
- changes to contractual payments
- charging for debt advice services
- debt management plans

Our response

The issues raised and our response are in Annex 5. In particular:

- We have elaborated on certain of the requirements around pre-contract information and advice and signposting customers – 8.3.7R.
- We have moved the provision on debt management firms signposting the availability of free debt advice to 8.2.4R.
- We have clarified our expectations about ‘significant repayments’ to lenders – we would normally expect no more than half of any payment from a customer from the first month of a debt management plan to be allocated to the firm’s fees and charges (covering both its initial set-up costs and ongoing management costs), and for the proportion to decrease after six months or (if earlier) once the initial set-up costs have been recovered – 8.7.3G. We consider the implications for firms and consumers in the update to our CBA in Annex 3. Although some firms may incur increased costs, consumers receive direct benefit if their debts are repaid earlier, and so we consider that there is limited net impact.
- We have also clarified that we expect firms to spread any management fees payable by the customer for the administration or operation of a debt management plan evenly over the duration of the plan – 8.7.3G.
- We expect the proportion of the customer repayments retained by a firm to take account of the level of customer repayments – 8.7.3G.

Other OFT guidance

4.17 We received feedback in relation to the following:

- misleading names
- mental capacity guidance
- guidance on sections 77-79 CCA
- second charge lending

Our response

The issues raised and our response are in Annex 5. In particular:

- We have clarified the scope of the mental capacity guidance and the reference to particularly vulnerable customers – 2.10 and 7.11.
- We have clarified the scope of the guidance on sections 77-79 CCA and added reference to relevant CCA regulations and case law – 13.1.
- We have clarified the extent of certain of the additional obligations on second charge lenders, deriving from the OFT guidance – 15.1.

Status disclosure

- 4.18** A number of respondents expressed concerns about the requirements for status disclosure, and felt that it would be impracticable to make the necessary changes by 1 April. There was also some uncertainty about what the requirements mean in practice.

Our response

It is important that consumers are aware of who regulates a firm. Our status disclosure rules in GEN 4 (which were published last August) will therefore come into force from 1 April. It will not, however, be necessary for a firm to indicate whether it has interim or limited permission, as we accept that this is unnecessary and could confuse consumers.

Firms will also be required to indicate the supervisory authority in credit agreements and pre-contract credit information forms. For a limited period before and after 1 April, it will be open to a firm to indicate that it is supervised by the OFT until 31 March and by the FCA from 1 April.

In some cases, it is also necessary to state the firm's registration number. This will be its interim permission number (which will be the same as its consumer credit licence number) or its firm registration number (FRN) if applicable.

Financial promotions

- 4.19** Chapter 5 of CP13/10 set out our proposals in relation to financial promotions. These were based primarily on our high-level principle that financial promotions and other communications should be clear, fair and not misleading. In addition, we proposed to carry across, substantially unchanged, the CCA advertising rules and OFT guidance.

Q8: Do you have any comments on our proposed approach to financial promotions?

- 4.20** Most respondents were broadly supportive of our proposals, although some questioned whether aspects went further than is permissible under the CCD. A number of respondents supported the idea of a ban on cold-calling, and argued that work in this area should be carried out as early as possible.
- 4.21** The main issues raised in the consultation are summarised below, together with our response on each. We have clarified our approach in some areas, but our overall approach remains unchanged.
- 4.22** Some respondents asked for guidance on specific issues, such as prominence, and we will consider this in due course if it seems appropriate.

APR triggers

- 4.23** Several respondents expressed concern that our proposed rules mean that all statements about speed or ease of service are to be treated as an 'incentive', triggering the requirement for a representative annual percentage rate of charge (APR) to be included. In particular, it was argued that this goes further than is permissible under the CCD.

Our response

We do not agree that our proposed rules contravene the CCD. On the contrary, article 4(1) expressly permits Member States to require an APR under national law without this triggering a representative example, and we are simply elaborating on what is already in the CCA regulations.

We have, however, added guidance at CONC 3.5.8G to make it clear that whether or not a reference to speed or ease constitutes an 'incentive' to apply for credit or to enter into a credit agreement will depend on the circumstances, including whether it is likely to persuade or influence a customer to take those steps or is merely a factual statement about the product or service.

Transitional provisions

- 4.24** There was concern that firms publishing catalogues on a biannual basis may not be able to comply in time with the new rules. For example, an autumn/winter catalogue may need to be produced before the rules are finalised and will remain in circulation after the end of the six-month transitional period.

Our response

We have included a specific transitional provision (at CONC TP6) for catalogues, etc, of at least 50 printed pages. If these are first communicated before 1 October 2014 and comply fully with the current CCA advertising rules, they will not need to comply with the new CONC rules until 1 April 2015.

Approval of promotions

- 4.25** There was concern that our proposed rules at CONC 3.11 – on not approving financial promotions made in the course of a personal visit, telephone conversation or other interactive dialogue – prevent firms from promoting their services by telephone.

Our response

As some respondents correctly observed, the aim of this rule is not to ban financial promotions made in the course of a personal visit, telephone conversation or other interactive dialogue by an authorised person (including its staff). However, the effect of this rule is to prevent the approval by an authorised person of a script to be used in the course of these dialogues or visits or conversations by another person and as such it will prevent persons who are not authorised from communicating these types of financial promotion.

Communications

- 4.26** There was concern that, as our proposals include communications and not just financial promotions, they go much further than the existing regime.

Our response

We do not agree that this is a substantial change for firms. Most of the rules in CONC 3 are limited to financial promotions, and where they extend to communications this is in line with the clear, fair and not misleading rule (which is itself an extension of Principle 7 of our Principles for Businesses).

5 Conduct rules for high-cost short-term credit, including payday loans

The HCSTC market has grown quickly in recent years as more and more consumers turn to this type of credit to help manage their finances. However, there is considerable evidence that there are serious problems in this market that are leading to poor outcomes for consumers.

We received a lot of feedback from a variety of stakeholders about our proposals. We considered all the responses and as a result we have made some adjustments to our rules on how firms can use continuous payment authorities – this now allows the customer to ‘reset’ the CPA when the CPA limit is reached and a loan is refinanced (including rollovers) or for instalment loans, subject to strict conditions to ensure consumers remain in control of their accounts. We have also changed the wording of the risk warning and the information sheet to make them more practical and effective in line with the comments we received.

Our proposal to limit rollovers to two has not changed and, subject to the changes set out above, we still propose to limit the number of CPA attempts to two.

Introduction

- 5.1** In CP13/10 we proposed new rules for HCSTC to help improve the poor outcomes that consumers experience in this market and address the issues being caused by harmful business practices as evidenced by consumer groups and the OFT compliance review.
- 5.2** Our proposals had two main aims:
- to ensure that firms only lend to borrowers who can afford it
 - to increase borrowers’ awareness of the costs and risks of borrowing unaffordably and ways to get help if they have financial difficulties

Definition of HCSTC

What we proposed

- 5.3** In CP13/10 we defined the HCSTC sector as set out below. This definition tried to capture the fundamental business models currently in the market and future-proof against potential gaming.

'High-cost short-term

'a regulated credit agreement:

- which is a borrower-lender agreement or a P2P agreement;
- in relation to which the APR is equal or exceeds 100%;

either:

- i) in relation to which a financial promotion indicates (by express words or otherwise) that the credit is to be provided for any period up to a maximum of 12 months or otherwise indicates (by express words or otherwise) that the credit is to be provided for a short term; or
 - ii) under which the credit is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the credit is advanced;
- which is not secured by a mortgage, charge or pledge; and

which is not a home credit loan agreement, a bill of sale loan agreement or a borrower-lender agreement enabling a borrower to overdraw on a current account or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.'

5.4 In the consultation we asked:

Q9: *Do you agree with the definition of a high-cost short-term credit provider as set out at the start of this chapter?*

Responses to the consultation

- 5.5** Several respondents highlighted that different definitions have been used by the OFT, the FCA and the Competition Commission (CC), and that one definition should be used consistently.
- 5.6** Others thought we might not have captured the market appropriately. Several firms argued that anything more than six months is not short-term, others that the definition would capture loans up to 24 months because of the way it is drafted. Several responses argued that the APR is not the best measure to use given the short-term nature of these loans.
- 5.7** Many responses suggested the definition was too narrow as it excluded certain forms of credit that can be just as expensive for consumers, for example unauthorised overdrafts and home-collected credit. In contrast, others thought the definition too broad and felt that it should explicitly exclude products such as credit cards. Other responses argued that certain providers should be excluded due to their nature or social purpose, such as community development finance institutions (CDFIs) and industrial and provident societies.

¹⁸ This is defined as "a community benefit society, a registered charity or a community interest company limited by guarantee (within the meaning of Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004)".

- 5.8** A number of firms argued that the proposals on rollovers and CPAs would have an adverse impact on instalment loans. Instead, they proposed that the definition should focus on products that are paid back in one payment.
- 5.9** Some responses highlighted the impending cap on the total cost of credit, either to suggest that the total cost should be used instead of the APR or that the proposals in CP13/10 should be suspended until work on the total cost cap has been finalised.

Our response

Our definition stems from our analysis of the market, with conduct rules that are specifically designed to respond to concerns about firms' business models. Despite some respondents being concerned that our definition was too broadly defined, we believe it is appropriate to future-proof and address potential gaming.

We do not propose to change the definition to include or exclude any further specific products. While many respondents suggested widening the scope of the definition to other forms of high-cost credit, we have not at this stage considered whether these specific rules would be appropriate or proportionate in other sectors. We have designed these rules to respond to the specific evidence for the HCSTC market but not beyond. This does not mean that we will not look in more detail at other lending markets after the transfer. We will set out our priorities in our Business Plan, which is due to be published in March 2014.

We have considered the impact of the rules on HCSTC on credit providers with a social purpose such as CDFIs. We recognise the important role that these organisations can play in addressing the gap between mainstream credit and HCSTC in a fair and responsible way, and have decided to exclude them from the HCSTC rules. As there is no statutory definition of a CDFI, we propose to exclude from the rules charities and the other corporate forms which are most commonly adopted by CDFIs. These are community benefit societies and community interest companies limited by guarantee. All of these are subject to an element of scrutiny of their social purpose by their respective registering authority or regulator. They will also continue to be regulated by the FCA for their consumer credit business.

While our definition is not identical to that of other bodies such as the CC, in practice the definitions target the same firms.¹⁹

We are aware of concerns about how the definition relates to our work on the total cost cap. We do not anticipate a contradiction as both workstreams concern HCSTC. However, we will consider whether the definition needs to be amended in light of our work on the price cap.

¹⁹ Further information on the Competition Commission payday market investigation can be found in their annotated issues statement published on 31 January 2014:
http://www.competition-commission.org.uk/assets/competitioncommission/docs/2013/payday-lending/140131_annotated_issues_statement__.pdf

Cap on rollovers

What we proposed

- 5.10** In CP13/10 we set out our concerns that loans that are repeatedly rolled over can lead to an unsustainable debt burden for consumers. By the second rollover a consumer could owe twice as much as they borrowed. We accepted that in some circumstances rolling over offered flexibility and might be in the customer's best interests, but we were concerned that any benefits from the added flexibility quickly diminish. Excessive rollovers can hide financial difficulty and can lead consumers' debt to spiral out of control.
- 5.11** We therefore proposed a cap of two rollovers, but we also asked for thoughts on whether one rollover might be a more appropriate cap.
- 5.12** In the consultation we asked:

Q10: *Do you have any comments on limiting rollover to two attempts?*

Q11: *Do you have any comments on whether one rollover is a more appropriate cap?*

Responses to the consultation

- 5.13** The majority of respondents, including some firms and trade associations, agreed with our proposal to cap rollovers at two.
- 5.14** Several responses, mostly from the industry, did not agree and questioned the rationale for the proposal. They felt that three would be more appropriate, in line with the Consumer Finance Association (CFA) Lending Code for Small Cash Advances. They argued that the data and evidence upon which we made our judgment are now out of date – principally, because firms' practices have changed following regulatory changes such as the OFT's compliance review of the payday sector.
- 5.15** These responses argued that there was insufficient evidence that a limit of two rollovers would improve consumer outcomes overall. They argued that the proposed limit will lead to a reduction in lending to some borrowers for whom it is ultimately affordable as businesses would be unwilling to lend to those who pose a higher credit risk. Many responses thought the alternative, for those excluded from this form of credit, would be resorting to illegal borrowing, which would lead to worse outcomes for those consumers.
- 5.16** In contrast, some responses, primarily from consumer groups, felt that we should go further and limit rollovers to one or ban them altogether, to limit costs escalating for consumers in financial difficulties.
- 5.17** Several firms argued that a limit of one would be too low, as it would substantially increase consumer defaults and have a negative impact on a consumer's credit rating and their ability to obtain future credit.
- 5.18** Several responses agreed with the proposed cap but argued that this would have limited effect as consumers are able to source multiple loans from different lenders. There was considerable support for real-time data sharing, whether through CRAs or a regulatory database.

- 5.19** Some respondents agreed in part but argued that at rollover the lender should require a certain amount of capital to be repaid to ensure that the total amount payable is reducing.
- 5.20** Two respondents raised concerns about the impact on the flexibility of their product offerings, and argued that our proposals would restrict the ability of consumers to 'renew' their agreements.

Our response

It is clear to us from the responses to the consultation that there is a consensus that some sort of restriction on rollover is necessary, but there is a debate centering on how many should be allowed. We understand the concerns raised by consumer groups about the impact of rollovers on consumers, and in particular the negative effect on consumers of loans being rolled over numerous times that were not affordable at the start.

We also recognise that there is a need for some flexibility for consumers to roll over their loans if they are unable to repay on time as a result of unexpected circumstances, such as being paid late. However, it is clear to us that the benefits of this flexibility diminish rapidly and the cost to the consumer increases sharply. Repeated rollovers can exacerbate financial difficulties. If a customer has run into unforeseen financial difficulty which prevents repayment even after a rollover then the best way to address it is forbearance and the agreement of an affordable repayment plan, not extending the loan and increasing the debt.

While there was considerable support from both consumer groups and some firms for prescribing whether the interest or charges as well as the original loan amount can be rolled over, there were a variety of views about how to give effect to this. Our work on the cap will address concerns about the cost of HCSTC including interest and charges, so we do not propose to address this issue at this time.

As we said in our consultation, a large part of the industry has acknowledged the negative effects of rollovers on consumers; for example the CFA Lending Code limits the number of rollovers to three. In our view this does not go far enough to protect consumers in financial difficulties, and so we have maintained our proposed limit of two rollovers, which we consider will provide the appropriate degree of consumer protection whilst enabling firms and customers to respond flexibly where the customer is unable to repay as a result of unanticipated circumstances.

We understand firms' concerns about the impact on the reduction of lending and how that impacts on the most marginal customers. As we set out in paragraph 6.67 of CP13/10 we recognise that some consumers may suffer detriment as a result of the direct or indirect consequences of these proposals. However, we believe these proposals including the limit on the number of rollovers will substantially increase consumer protection overall.

We discuss the broader issue of data sharing at the end of this chapter.

Cap on the number of CPA attempts and banning part payment

What we proposed

5.21 In CP13/10, we discussed some of the abusive practices associated with CPAs. We explained that we believe that CPA repayments encourage inadequate affordability assessments and the unfair treatment of customers experiencing difficulties, but we recognised that CPAs also provide some flexibility for consumers. In seeking to strike the right balance between enabling a flexible payment method and ensuring consumer control we proposed to introduce a limit of two unsuccessful attempts to use a CPA to pay off a loan, and to ban the use of CPAs to take part payments.

5.22 In the consultation we asked:

Q12: *Do you have any comments on our proposal to introduce a limit of two unsuccessful attempts on the use of CPAs to pay off a loan?*

Q13: *Do you have any comments on our proposal to ban the use of CPAs to take part payments?*

Responses to the consultation

5.23 There was a general consensus that the FCA does need to limit the use of CPA to prevent consumers losing control of their accounts but very differing views on how that cap should apply and the overall benefits of what was proposed.

5.24 While the majority of responses supported our proposal to introduce a limit of two unsuccessful CPA attempts (including consumer organisations, some firms and their trade associations) some responses, mainly from consumer groups, argued that the number of unsuccessful attempts should be limited to one, or that we should ban the use of CPAs altogether. However, a number of HCSTC representatives argued that our proposals would have unintended effects on consumers and asked for more attempts to be allowed, and for clarification in a number of areas.

5.25 Overall there was strong support for the proposal to ban part-payment by CPAs, especially from consumer groups. The vast majority of responses agreed with the proposal, although some respondents were confused about what this would mean in practice. Many firms on the other hand were opposed.

Reduce CPA limit

5.26 Many consumer groups argued that we should reduce the number of CPA attempts to one, or ban the payment method altogether. They raised concerns about the way that CPAs are being used by firms and argued that CPAs enable firms to establish themselves as priority creditors, which can lead consumers to miss genuine priority debts and not have funds for priority expenditure such as food. They included many examples where the use of CPAs has led to considerable consumer detriment. They also expressed concern that CPAs are not well understood by consumers. They suggested that the use of CPAs is a sign that lenders' checks are not rigorous and that firms are using CPAs as a safety net.

5.27 Many respondents highlighted that consumers are still having difficulties trying to cancel CPAs, despite their right to do so. They said that we should ensure consumers can cancel CPAs quickly and easily.

5.28 A number of respondents argued that consumers need advance notice about when the firm will take payment and how much that will be.

Increase or alter CPA cap

5.29 In contrast, a significant minority of respondents, including most HCSTC firms and their trade associations, argued strongly against the proposed CPA restriction. These responses argued that our proposals would result in fewer benefits and greater costs for consumers than we had suggested. Many proposed alternative ways of restricting CPAs, which they argued would not be so restrictive on a payment method that can be beneficial for consumers.

5.30 In particular, they highlighted the benefit and convenience to consumers of CPAs. Industry respondents argued that CPAs can fail for many reasons, including human or telecommunications errors, fraud and timing of credits. Some argued that many consumers are self-employed or have occupations where their income may fluctuate.

5.31 They argued that, if funds are not available on the correct date, but are available on a subsequent day, CPAs provide a convenient means of making payment, which allows the customer to avoid (or at least minimise) any default and penalty charges. The CPA is a flexible payment method which, in contrast to direct debits, does not incur a charge for missed payment.

5.32 Several trade associations and firms argued that a limit of two failed CPA attempts will not lead to good consumer outcomes, but will cause a significant increase in consumer defaults and lead to higher default fees and interest charges as a consequence.

5.33 They also maintained that the proposals will increase debt collection costs, and could force lenders to make greater use of county courts at an earlier stage, which is not in consumers' best interests.

5.34 Many industry responses questioned the evidence on which the proposal is based. They argued that the current safeguards are sufficient and that the evidence on which the FCA made its judgment and the problems identified by the OFT compliance review were out of date. They further suggested that there is no evidence that the CPA limit we proposed would have positive economic outcomes in particular in the form of benefits for consumers. They proposed that we should focus on enforcement of the OFT standards rather than making new rules.

5.35 A few responses also argued that our proposed approach was inconsistent with the approach taken to CPAs across the wider consumer credit market. These responses argued that our rules on CPAs should be the same for all providers. If two unsuccessful attempts are an indicator of a consumer in financial difficulties, then they argued that this should be applied more widely than HCSTC.

5.36 A number of smaller firms suggested that the proposed restriction on the use of CPA could have an unfair impact on their ability to carry on trading in this market because their banks will not facilitate their use of direct debit.

5.37 Many of these responses proposed a repayment window of two to five days, linked to the contracted payment, in which multiple CPA attempts could be made by the lender. They argued that this offered a better balance between customer convenience and consumer control.

Further clarification

5.38 There was some confusion in the responses about how the CPA limit applied to instalment loans and whether it was two unsuccessful attempts per instalment or per loan. Several responses highlighted the potential difficulty for instalment loans where the CPA is more likely to fail for

reasons other than financial difficulties due to the increased number of payments during the course of the loan.

- 5.39** These respondents argued that a hard limit of two unsuccessful failed CPA attempts unfairly disadvantages instalment loans, and may force consumers to use other payment methods that can be more costly and burdensome to consumers. They suggested it would lead to products being withdrawn, a reduction in consumer choice and restricted competition.
- 5.40** Many responses to the consultation questioned what would happen to a consumer who was unable to repay the loan on the agreed date and who chose to roll over the loan or who agreed a repayment plan with the lender. They wanted to know whether the limit of two unsuccessful attempts per loan would mean that CPA was no longer an option for consumers who chose to roll over their loans or agree repayment plans.
- 5.41** Others questioned what would happen if multiple repayments were agreed under a repayment plan to make the loan more affordable, as this could increase the possibility of CPAs failing in the same way as an instalment loan. Many of these responses argued that there is a need for some type of re-set, or limit to two attempts in 30 days, or to each instalment.
- 5.42** Many responses also wanted clarification about whether following two failed attempts consumers would be able to use the same card to make repayments, or to reset the CPA restriction.
- 5.43** Several consumer groups argued that CPAs should not be used unless a consumer is warned in advance. Several firms highlighted that the CFA Lending Code requires members to inform the customer three days before attempting repayment about the use of CPA and encourages the customer to contact the firm if the customer is in financial difficulties and cannot make the payment.
- 5.44** A number of respondents asked us to clarify whose responsibility it is to ensure that no attempt is made after the limit has been reached – the lender or the payment service provider.

Part-payment

- 5.45** On part-payment, there was general support for our proposals. However, there was clearly some confusion about exactly what we meant. Some consumer groups expressed concern that a ban on part-payment may prevent consumers from paying down part of their debt if they are unable to pay back the whole amount. This would have adverse consequences, for example when a part-payment may prevent late payment fees or default interest charges being applied.
- 5.46** Several firms also argued that it is in the interests of the borrower to reduce their debt where they can afford to make a part-payment, and that we should not prevent them from doing so, as this will mean that they will remain indebted for longer. Several firms queried whether part-payment would be allowed where a repayment plan has been agreed.
- 5.47** Certain firms argued that, rather than a ban on part-payment, there should be a focus on ensuring that consumers are informed at point-of-sale about the use of part-payments. They proposed that consumers could be given the option at the outset to make full repayment or allow part-payment to be taken by the firm.
- 5.48** Of those firms who did not agree, several argued that this would make it easier for consumers who choose not to pay.
- 5.49** Some firms argued that the ban on part-payment should be applied more widely to the consumer credit market as a whole.

Our response

Limit of two failed attempts

We recognise that, used correctly, CPAs can provide consumers with a convenient and flexible payment method as they do not rely on manual transfer and, unlike other payment methods, lenders and payment service providers do not generally charge for failed payments.

Many firms sent detailed data to demonstrate the impact that our proposals may have on their businesses and to support their arguments for a greater number of attempts over a longer period. However, what this data underlined is that the majority of consumers are able to pay back on the due date or the following day, and this finding is reinforced by the CC findings.²⁰ The responses by some firms also clearly demonstrated that they have been using CPAs very aggressively and as a debt collection method because they do not consider other forms of debt collection to be proportionate given the low value of these loans.

Some firms and their trade associations argued that the evidence on which our proposals are based is out of date. We are aware that there has been a reduction in the overall number of CPA attempts since VISA introduced its rule change on excessive authorisations in March 2013. However, given the evidence from consumer groups in response to the consultation it is our view that these changes do not go far enough to address the concerns we set out in CP13/10. Furthermore, VISA continues to report CPA attempts which are in excess of its own rules.

The consumer group responses on the other hand provided numerous examples of consumers losing control of their bank accounts with the consequence that they could not make priority payments (e.g. food and heating) and being bombarded with repeated attempts to take payments through CPAs even when they had made clear to the lender that they were unable to pay.

We start from the position that the failure of a CPA may be an indication that the borrower is in financial difficulty, but acknowledge that there may be other reasons for the failure. We consider that a limit of two failed attempts provides an appropriate degree of consumer protection, while making allowance for the possibility that CPAs may fail for reasons other than financial difficulties. By no later than the second failed attempt the lender should contact the borrower to establish the reasons for non-payment.

If, for example, the customer can afford to pay but the CPA has failed twice because the customer was paid late, then the customer can give separate consent for a one-off payment, or make other payment arrangements. But if in the course of the dialogue with the customer the lender establishes that he or she cannot pay, then the lender is required to treat the customer fairly and with forbearance and due consideration. This may include the lender agreeing a repayment plan that includes a number of reduced payments.

²⁰ We have found that around 65 per cent of loans are repaid in full on time or early. A relatively high proportion of those paid late appear to be repaid late by only one day (paragraph 34 of the CC's payday lending market investigation annotated Issues statement).

As explained below, we have revised how the CPA limit will work in certain circumstances, but we have maintained our overall approach and limited CPA to two failed attempts.

One-off payments by consumers

We found that many of the responses were based on a misunderstanding that we intended to ban one-off payments by consumers. As a result, the responses over-estimated the impact of our rules. It was not our intention to prevent customers making one-off payments using the same card as that used for the CPA. We have adjusted our definition of a CPA to make this clearer.

“continuous payment authority

consent given by a customer for a firm to make one or more requests to a payment service provider for one or more payments from the customer’s payment account, but excluding:

- (a) a direct debit to which the Direct Debit guarantee applies; and
- (b) separate consent given by a customer to a firm following the making of the credit agreement for the firm to make a single request to a payment service provider for one payment of a specified amount from the customer’s payment account on the same day as the consent is given or on a specified day.”

Refinancing

Given the benefit to the consumer of CPAs when used responsibly, we will allow the consumer to ‘reset’ the CPA when the agreement is rolled over or refinanced. In these situations the failed CPA attempts will trigger a dialogue between the lender and the consumer, and this will mean that the CPA can be restarted by the consumer if they choose to and the firm has explained the way in which the CPA will be used.

In these circumstances, we would expect firms to keep records to demonstrate that the consumer has consented to the further use of the CPA. We have included guidance that highlights to firms that they should have particular regard to the general record-keeping requirements set out in SYSC 9.1.

Instalment loans

The intention of our proposals as set out in CP13/10 was to limit the CPA to two failed attempts per loan, as set out in paragraph 6.39. We recognise that the CPA limit as proposed could have a disproportionate impact on instalment loans. Having carefully considered the feedback, we will allow the CPA limit to be re-set, provided that following two unsuccessful attempts to collect the instalment, the firm makes contact with the customer and the consumer is able to pay the instalment by means other than a CPA. In this case, the firm would be able to ‘re-set’ the CPA limit for the remaining payments.

If a customer is not able to make up the instalment payments, this may indicate financial difficulties. In these cases, we would expect the firm to enter into a dialogue with the consumer. We do not believe that it is appropriate for the firm to continue to use a CPA if the consumer is in financial difficulties. However, if it is clear that a consumer is not in financial difficulties, but they are unable to

pay possibly due to unexpected circumstances, then the firm may continue to use a CPA if the firm is able to evidence that:

- they have had a discussion with the customer in which the customer consents to the use of the CPA, and
- they exercise forbearance (in accordance with CONC 6.7.17R (2)), or
- they do not increase the total amount repayable under the agreement as a result of a missed payment on a due date.

The rules on refinancing and part-payment also apply to instalment loans, so a firm will be able to use a CPA where they have allowed the customer to pay instalments which are less than are due under the agreement in a repayment plan, as long as the consumer has given their express consent to the use of the CPA.

We will monitor the market for any evidence that instalment products are being used to bypass our restrictions on repeated CPAs inappropriately, and we will not hesitate to take action if we identify poor conduct.

Information

We did not consult on introducing a requirement for firms to inform consumers before they use CPAs, although we can see that there are potential benefits to consumers. We will consider consulting on such a rule after the transfer.

Cancelling CPAs

CONC 7.6.16R makes it clear that firms must not inhibit or discourage a consumer from cancelling a CPA. Payment service providers also have a responsibility to ensure that consumers are able to cancel CPAs directly with them if they want to.

Part-payment

It was not our intention to prevent one-off payments of a lesser amount by consumers if the consumer is unable to make the full repayment, and we have revised the definition of a CPA to make this clearer. Our proposals were intended to give consumers back control over their accounts. Given the evidence of harm caused to consumers by numerous part-payment attempts, we do not agree that information at point-of-sale is effective or provides adequate consumer protection from unscrupulous practices in this market. For this reason, we have maintained our ban on the use of CPAs to take part-payment.

If a consumer is unable to pay back their loan on time, our rules require lenders to treat customers fairly and with forbearance and due consideration. This may, for example, include the lender agreeing to a repayment plan that includes a number of reduced payments. We have made it clearer in the rules that the ban on the use of CPAs to take part-payment does not prevent the firm from entering into a repayment plan when exercising forbearance or refinancing agreements with a single repayment or instalment loans. However, the use of CPA to take these payments will require the express consent of the consumer to the CPA.

We understand why there was some support for extending the ban on using CPAs to take part-payment to the consumer credit market more widely. We do not have evidence that this practice is causing harm to consumers in the wider credit market, so we do not propose to extend the ban to the wider market at this time, although we may reconsider if we have evidence that this is a wider problem which is leading to poor outcomes for consumers.

Where better disclosure could help: risk warning

In CP 13/10 we consulted on the risk warning below:

Think! Is this loan right for you?

Over 2 million short-term loans were not paid off on time in 2011/2012. This can lead to serious money problems.

If you're struggling, go to www.moneyadvice.service.org.uk for free and impartial help.

5.50 The proposed risk warning had two objectives:

- To make consumers who may roll over more aware of the risks and consequences from doing so, namely the rapid increases in the amount owed. This was informed by academic thinking in the United States that suggested that highlighting the costs/risks of rollover could have an impact on consumer behaviour, making some less likely to borrow.
- For those in financial difficulties more generally we sought to signpost where they could get help – by directing them to the Money Advice Service (MAS).

5.51 We proposed that the risk warning would apply from 1 April 2014 for 'electronic communications', where it was easier to introduce the new warning, and 1 July 2014 for non-electronic media.

5.52 In the consultation we asked:

Q14: Do you have any comments on our risk warning?

Responses to the consultation

5.53 The general feedback was that the risk warning needs to be shorter and sharper. In particular, respondents objected to 'Over 2 million short-term loans were not paid off on time in 2011/2012'. Responses suggested that it would not change behaviour, was not meaningful, and would soon require updating.

5.54 Some responses thought we should conduct research on what warning would be most effective. Others thought work was needed on what signpost was used. Both industry and consumer groups thought the url link should be specifically for this sector, rather than the generic MAS website.

5.55 Some consumer groups wanted the risk warning to be clearer that rolling over a loan is very expensive, including making each firm provide the exact charges incurred. Others wanted the risk warning to set out that these loans are expensive relative to other credit products. Some respondents also commented on how the risk warning would work in different media such as

social media, online adverts and text messages. They noted that the proposed risk statement would simply be too long. Some wanted an exemption for certain media, others an alternative shorter warning, and others further guidance.

- 5.56** There were different views on whether further guidance was needed on how 'prominent' would work for the risk warning.
- 5.57** There were mixed views on whether the risk warning should apply only for HCSTC or for credit products more widely.
- 5.58** Many respondents also thought there should be a telephone number on the risk warning to ensure those excluded from the internet have access to help.

Our response

We accept that the initial proposed risk warning was too long but we remain keen to highlight the risks of rollover, which consumers may not otherwise consider. Academic research suggests this can impact on some consumers' behaviour.

We discussed with MAS how best to revise the warning and also sought the input of other stakeholders and experts in its design. We considered carrying out more consumer research, but we decided that we could get appropriate insights from the professionals we consulted, not least because of the limitations of using research to predict how consumers react in a real-life situation. We are also constrained by the CCD, which prevents us focusing a risk warning on the high cost of these products.

The revised warning is much shorter, and should address the wider concern about how it will work across different media.

Warning: Late repayment can cause you serious money problems. For help, go to moneyadviceservice.org.uk

The initial warning was 38 words and 232 characters; the revised version is 14 words or 103 characters. We think this largely mitigates the concerns expressed, while still achieving, as far as is feasible, the original rationale.

We have discussed with MAS the possibility of creating a specific url for this sector, but they felt that their generic url would gain more traction and recognition for consumers. The url also explains what help is available. We have also revised our rules to enable firms to refer to the MAS logo instead of the url if they want. A licence to use the logo is available from MAS. That may further reduce the length of the risk warning and potentially make the signposting more appealing to consumers.

MAS will put in place a dedicated webpage for this market to ensure that consumers who come through to it get relevant and useful information about their situation. However, we concluded that it was not practical to include a telephone number.

We have decided to keep the risk warning for HCSTC only, as it is directed specifically at the issue of rollover and its impact could be undermined if used across the credit market.

We have decided not to give any further guidance on how the risk warning should be displayed. We would expect firms to reflect on how to make the advertisement work in line with our principles and in accordance with established processes in each medium; for example, for television there are rules around how to ensure a risk warning works – through the Broadcast Committee of Advertising Practice guidance.

We appreciate that for certain social media (with character-limited space) there may be ongoing concerns about how practical the risk warning will be. So we are introducing a test of ‘unless by reason of the space available on the medium in question it is not reasonably practicable to do so’ into our rules for financial promotions in an electronic communication. To use this exemption firms will need to be able to demonstrate to us why they are unable to include the risk warning.

We plan to outline our wider approach to advertising in social and other digital media shortly. This will provide greater clarity about how firms can comply with our financial promotions rules in character-limited media.

Information on free debt advice

What we proposed

5.59 We proposed to introduce a new rule to require HCSTC lenders to provide customers with information on free debt advice before their loan is rolled over or refinanced. This should help consumers to make more informed decisions, in this instance about managing their debt. It would follow broadly the same format as the information sheets already produced for customers in arrears.²¹

5.60 In the consultation we asked:

Q15: *Do you have any comments on our proposals to require high-cost short-term lenders to provide information on free debt advice before the point of rollover?*

Responses to the consultation

5.61 Overall the responses strongly supported the proposal to provide information on free debt advice at rollover. Several consumer groups argued that this information should also be given at point-of-application or point-of-sale, or when forbearance is discussed.

5.62 A number of firms argued that the information sheets are not appropriate for consumers at the point of rollover and that they would cause distress to those who are not in financial difficulties. Others argued that it could lead to too much information and may cause consumers to miss key features and terms of the product.

²¹ <http://fca.org.uk/firms/firm-types/consumer-credit/information-sheets>

- 5.63** Several respondents argued that we should not only signpost free debt advice, but that we should also signpost fee-charging debt advice providers.
- 5.64** Some firms argued that there needs to be greater flexibility about how this information is communicated to consumers to ensure that it does not prevent consumers from rolling over, and to ensure that it is as effective as possible.

Our response

Given the strong support for signposting free debt advice at rollover, we are introducing an information sheet for HCSTC, and requiring firms to provide this when they refinance (including roll over) a loan.

We do not propose to require firms to give this information at point-of-sale, or point-of-application, as the risk warning that will be included in advertising of HCSTC will include signposting.

We have updated the information sheet in line with our approach to the other information sheets, and to ensure that it is appropriate for HCSTC. Debt Advice NI and Money Advice Scotland are now more prominently displayed on the information sheet making it more appropriate for use throughout the UK.

In line with the other information sheets, we do not propose to include fee-charging debt advice providers.

Price capping

- 5.65** In the consultation we noted that we planned to carry out further research in this area.
- 5.66** We asked:

Q16: *Do you have any comments on the effectiveness of price capping?*

- 5.67** In November 2013, the Government announced its intention to give us a duty to impose a price-cap on high-cost short-term credit. The Banking Reform Act 2013 has brought this duty into law. It sets out:
- that the price-cap applies to HCSTC (but this is not defined in the Act)
 - a new duty to exercise the price-capping power under section 137C FSMA with a view to securing an appropriate degree of protection for borrowers against excessive charges
 - the cap must be in force by 2 January 2015.
- 5.68** A number of points were made about the potential impact of a cap in the responses including:
- Prices will gravitate towards the level of the cap, reducing competition.

- Lenders will tighten their criteria and reduce access to credit. This will result in reduced access to credit for lower-income individuals and encourage them to resort to unregulated sources.

Our response

We will take these issues into consideration as we take forward our price-capping analysis.

We have started and will continue to engage with stakeholders to help us develop our proposals. We expect to publish a consultation paper in July 2014 and final rules in November 2014, with the cap coming into force by 2 January 2015.

Real-time data sharing

- 5.69** In CP13/10 we acknowledged that lenders only have access to the data that has been made available to the CRA that they have sought information from. We said that we would like the Steering Committee on Reciprocity (SCOR) to identify and remove any blockages faced by HCSTC lenders and CRAs in sharing real-time data with the rest of the credit market as a matter of urgency.

Responses to the consultation

- 5.70** We did not ask a specific question however, we received a significant number of responses that were in favour of data sharing, with a particular focus on real-time data sharing or data being updated at least every 24 hours. Some respondents felt that we should set up a regulatory database. In particular, several respondents who gave us feedback about rollovers felt that real-time data sharing through a regulatory database would be necessary to limit rollovers. Without it, they argued, it would be difficult to stop consumers going to another firm when they are unable to roll over. Several respondents argued that it could also prevent borrowers being able to take out multiple short-term loans.
- 5.71** Several consumer bodies highlighted that better data sharing through CRAs was essential to enable firms to carry out adequate affordability assessments and reduce the number of consumers who find themselves with spiralling debt problems.
- 5.72** There was also support by some firms for real-time data sharing, as they argued that without it they are unable to effectively compete in these markets and provide cheaper products.

Our response

We agree that better data sharing would be good for consumers. It would allow lending decisions to be based on more up-to-date information and support more effective affordability assessments; in turn this should enable lenders to make better-informed and more accurate lending decisions. This could also help borrowers who are trying to improve their credit rating by providing more up-to-date information.

We have already said that we would like the industry to identify and remove any blockages to real-time data sharing as a matter of urgency. There have been a number of developments in relation to real-time data sharing by CRAs since the consultation paper was published including announcements by Callcredit and Experian of products that provide daily updates on such loans. We welcome any moves by the industry to overcome the technological barriers to real-time data sharing but other obstacles remain to the systematic sharing of data in this sector.

We strongly encourage action by the industry to improve data sharing, but we are also aware that this approach has not succeeded in other areas such as SME lending. We will prioritise discussions with the industry about whether they can overcome the obstacles to effective real-time data sharing, in particular:

- how to ensure the necessary participation to make this effective
- what is a reasonable timeframe to make clear progress.

We will conclude these discussions by the summer. If the industry cannot overcome the obstacles, and we are best placed to bring about data sharing, we will not hesitate to act.

6 Conduct rules for debt advice providers and peer-to-peer lending platforms

- Most of our proposals for firms that provide debt advice and P2P lending platforms have not changed, but we have further clarified what constitutes debt counselling when providing debt advice.
- The scope of the regulated activity in relation to P2P lending has been clarified by a Government Order.

Providing debt advice

- 6.1** In CP13/10 we identified two types of debt advice provision:
- generic advice that is not regulated debt counselling
 - regulated debt advice on the liquidation of a debt due under a consumer credit or consumer hire agreement (debt counselling).
- 6.2** We consulted on draft perimeter guidance, which included illustrative examples of different types of debt advice provision.
- Q19: *Do you have any comments on our draft guidance on the debt counselling activity and our draft rules covering the provision of debt advice?***
- 6.3** Most respondents supported our approach to defining the perimeter for debt counselling. Our examples were largely welcomed, although some changes were suggested. In particular, respondents wanted more clarity on when the provision of money advice or budgetary advice may constitute regulated debt counselling.
- 6.4** Some respondents welcomed in particular our draft guidance that, where a referral (e.g. by a lead generator) is made to a specific debt management firm known to offer only one form of debt solution, this may constitute regulated debt counselling, as the outcome of the referral is effectively pre-determined.

Lead generators

- 6.5** Some respondents expressed concern that we had raised the threshold (compared to the position under the CCA/OFT regime) of what constitutes regulated debt counselling, by

excluding 'generic advice', and as such had 'deregulated' some lead generators operating in the debt management sector.

Our response

Generic debt advice is not regulated debt counselling because it does not relate to the liquidation of particular debts, and our position on this is no different from the OFT's.²² Generic advice is unlikely, however, to be as relevant in the debt area as it is for advice provided in connection with other regulated activities (see also below).

The Government has stated that it has not seen sufficient evidence to support a decision to regulate the effecting of introductions to debt advice providers but that we would look at alternative measures to tackle misconduct by lead generators.

Consequently, we have included rules that reflect the OFT's Debt Management Guidance, and some additional guidance, setting out the responsibility of debt management firms when dealing with lead generators.²³ In particular, firms must take reasonable steps before accepting sales leads to ensure that key aspects of the lead generator's activities comply with relevant legal requirements and that there is adequate transparency to customers.

Debt management firms

- 6.6** Some respondents (primarily consumer groups) were concerned that some debt management firms might argue that they only provide 'generic advice' to avoid being subject to our regulation.

Our response

We consider that an essential element of debt management business is to identify what are suitable and unsuitable debt solutions for clients.²⁴ So to conduct their business appropriately, debt management firms must necessarily engage in regulated debt counselling rather than merely providing generic advice to clients.

Debt consolidation

- 6.7** Some respondents (primarily mortgage advisers and independent financial advisers) wanted clarification on whether advising on consolidating unsecured debts into a regulated mortgage contract constitutes regulated debt counselling.

Our response

Advising a client to consolidate debts from unsecured credit agreements (or second charge loans) into a mortgage contract is likely to be regulated debt

²² See in particular paragraph 3.10 of OFT 1338resp, *Summary of responses to the consultation on debt management (and credit repair services) guidance* (November 2012).

²³ See CONC 8.9.

²⁴ See CONC 8.3.2R(3).

counselling, as the objective is to enable the client to manage the repayment of their debts better. This will be the case even if the debt advice is secondary to another regulated activity, unless it is 'advising on regulated mortgage contracts' (i.e. advising on entering into or varying a *particular* regulated mortgage contract) in which case it will be subject to MCOB rules.²⁵ We include illustrative examples in our perimeter guidance.²⁶

Insolvency practitioners

- 6.8** A number of respondents questioned the scope of the Government's exemption for IPs from the debt counselling activity.

Our response

Firms are excluded from the debt counselling activity where they are acting as an IP (as defined in legislation²⁷) or in reasonable contemplation of being appointed as an IP.²⁸

However, their conduct when acting as an IP remains subject to scrutiny by their recognised professional bodies (RPBs) such as the Insolvency Practitioners Association. The Insolvency Service and the RPBs regulate IPs to ensure that they are fit to act as insolvency practitioners. IPs are also required to observe the Insolvency Code of Ethics.

The exclusion extends to things done by an IP's firm in connection with the IP acting as an insolvency practitioner, but not to the activities of the firm (including its debt advice activities) more generally.

Regulatory certainty

- 6.9** A few respondents wanted clearer guidance on the circumstances in which debt advice may be classified as regulated debt counselling.

Our response

We have made some amendments to our perimeter guidance in light of responses, but we do not consider more substantial changes to be necessary.

We cannot give debt advisers complete certainty about whether or not they are carrying on regulated debt counselling, as this will depend on the context and circumstances in which the advice is provided. Firms will need to decide for themselves, by reference to our guidance, whether they are carrying on regulated activities.

²⁵ The scope of the exemption in article 39J of the Regulated Activities Order was amended by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014, SI 2014/366.

²⁶ PERG 17 of the Perimeter Guidance manual – see in particular Examples 17 & 18.

²⁷ See section 388 of the Insolvency Act 1986.

²⁸ The exemption for IPs was amended to an exclusion by SI 2014/366. For acting as an IP, the exclusion covers the non-credit activities for which IPs were previously exempt, plus debt counselling, debt adjusting, debt administration, debt collecting and credit information services. For acting in reasonable contemplation of such an appointment, the exclusion only covers debt counselling, debt adjusting and credit information services.

Peer-to-peer lending platforms

- 6.10** In CP13/10 we consulted on proposals to ensure adequate protections for borrowers who obtain credit via a P2P lending platform.²⁹ In particular, our aim was to ensure similar rights and protections in certain key areas to those available to borrowers generally, while at the same time taking account of the special features of P2P lending.
- 6.11** Table 6.1 (below) summarises the rules we are applying to P2P platforms. Although some rules do not come into effect until after 1 April 2014, our high-level rules will apply to P2P lending platforms from that date.
- 6.12** We have consulted separately on our regulatory approach to crowdfunding, including the lending/investing aspects of P2P lending.³⁰ A policy statement will be issued in the near future.

Q20: Do you have any comments on the rules that we propose to apply to peer-to-peer lending platforms to protect borrowers?

- 6.13** Most respondents welcomed our proposed approach, considering it both appropriate and proportionate. However, a number raised concerns about the scope and complexity of the new regulated activity and our proposals in relation to information sheets.

The regulated activity

- 6.14** The new regulated activity of ‘operating an electronic system in relation to lending’ is set out in article 36H of the RAO.³¹ There was concern that this was unduly complicated and difficult to understand, and might inadvertently catch activities unrelated to P2P lending.

Our response

The scope and definition of the regulated activity are matters for Government. In response to concerns raised by stakeholders, the Government has made an Order amending the definition with a view to clarifying its application.³² The key additional elements are that the platform receives payments from the borrower, and passes these on to the lender, and exercises or enforces rights on the lender’s behalf.

The new activity relates to the P2P platform. In some cases, individual P2P lenders may be engaged in regulated activity, if they are lending ‘by way of business’. We have issued guidance on carrying on regulated activity by way of business.³³

²⁹ In CP13/13 we refer to firms running ‘loan-based crowdfunding platforms’ as an umbrella term to recognise that not all such platforms facilitate individuals lending to other individuals (peer-to-peer). We use the ‘peer-to-peer’ term here as only platforms arranging consumer credit will be subject to these rules, other similar platforms, like those that arrange loans for limited companies, will not.

³⁰ CP13/13, *The FCA’s regulatory approach to crowdfunding (and similar activities)*, October 2013.

³¹ Article 4 of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, SI 2013/1881.

³² The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014, SI 2014/366.

³³ PERG 2.3 in the Perimeter Guidance manual.

Information sheets

- 6.15** Some respondents questioned the content of the information sheets that P2P platforms will have to provide to borrowers in arrears or default.

Our response

The wording of the arrears information sheets to be used by P2P platforms is set out in CONC 7.17.5R(4) and 7.18.3R(2). A downloadable version of the sheets will be available on our website by 1 July 2014, three months before the relevant rules come into effect on 1 October 2014.³⁴

If a P2P platform is facilitating the provision of HCSTC, our new HCSTC rules will require the platform, before refinancing the credit, to provide the borrower with an arrears information sheet in substantially the same form as the information sheet to be provided by HCSTC lenders under similar circumstances. The wording of this information sheet (with modifications for P2P platforms) is set out in CONC 6.7.20R. This requirement comes into effect from 1 July 2014 and we will publish a downloadable copy of this information sheet on our website by 1 April 2014.

Table 6.1 – Summary of rules to protect consumer borrowers obtaining credit via P2P lending platforms

Proposal	Implementation date
High-level rules (PRIN, SYSC and GEN).	1 April 2014
Provide adequate explanations of the key features of the credit agreement to borrowers (including identifying the key risks) before the agreement is made (see CONC 4.3.3G, 4.3.4R and 4.3.5R and transitional provision TP 4.1).	1 October 2014
Assess the creditworthiness of borrowers before granting credit (see CONC 5.5 and transitional provision TP 4.2).	1 October 2014
Rules relating to financial promotions (except for risk warnings) (see CONC 3.2, 3.3, 3.10 and 3.11).	1 April 2014
Provide risk warning on HCSTC financial promotions (see CONC 3.4.1R and transitional provision TP 3.1).	For any electronic communication ³⁵ this rule will come into effect on 1 April 2014, while for all other adverts it will be on 1 July 2014
Provide a specific risk warning to a borrower if the loan is secured against the borrower's home (see CONC 4.3.6R).	1 April 2014
Inclusion in the agreement between borrower and lender of a right for the borrower to withdraw from the agreement, without giving any reason, by giving oral or written notice, within 14 days of the agreement being made etc.(see CONC 11.2 and transitional provision TP 4.6).	1 October 2014

³⁴ We are not requiring P2P platforms to provide a default information sheet (as proposed in paragraph 8.10 of CP13/10). The arrears information sheet has been amended to state what might happen if borrowers in arrears do not act promptly and subsequently go into default.

³⁵ This covers emails, online and text messages.

Provide notices to borrowers in arrears or where a default sum is payable, and information sheets to borrowers in arrears directing them to sources of free and impartial debt advice (see CONC 7.17 to 7.19 and transitional provisions TP 4.3 to TP 4.5).	1 October 2014
Providing an information sheet to borrowers before refinancing HCSTC loans (see CONC 6.7.20R and transitional provision TP 3.2).	1 July 2014
Rules relating to the carrying on of the following activities where applicable: – debt collection (see CONC 7) – the provision of services akin to credit information services including credit repair (see CONC 8.10).	1 April 2014 (Firms may wish to note the transitional provisions in relation to corresponding rules as set out in TP1 and TP2 of Consumer Credit Instrument 2014)
Rules and guidance relating to the refinancing of credit arrangements (see CONC 6.7.17R to 6.7.19R, 6.7.21G to 6.7.22G and 6.7.24R to 6.7.26R).	1 April 2014 (see transitional provisions TP1 and TP2).
Limit the number of times a HCSTC loan can be rolled over to two (see CONC 6.7.23R and transitional provision TP 3.3).	1 July 2014
Limit the number of attempts on the use of CPA to recover HCSTC loans to two (see CONC 7.6.12R, 7.6.13R and transitional provision TP 3.4 and 3.5). Prohibition on using CPA to recover part-payment of HCSTC loans (see CONC 7.6.14R and transitional provision TP 3.6).	1 July 2014

7 Prudential standards for debt management firms and some not-for-profit debt advice bodies

This chapter summarises feedback on Q17 and Q18 of CP13/10 and our response.

Most of our proposals have not changed, but we have amended our volume-based prudential requirement.

Introduction

- 7.1** Chapter 7 of CP13/10 set out our prudential standards proposals for debt management firms. In light of the responses to our previous consultation, FSA CP13/7, we proposed to extend the application of our prudential standards to include not-for-profit debt advice bodies that hold £1m or more in client money.³⁶
- 7.2** We proposed that the prudential requirement would be the higher of:
- a fixed minimum amount of £5,000
 - a volume-based measure equal to 0.25% of a firm's 'relevant debts under management'.
- 7.3** We also proposed that our prudential standards would not apply until firms are fully authorised and there would be transitional arrangements for our prudential regime until 1 April 2017.
- 7.4** The draft provisions were set out in Appendix 2.

Prudential resources requirement

- 7.5** In the consultation we asked:

Q17: *Do you agree with our proposals on how to calculate our prudential requirement for debt management firms and some not-for-profit debt advice bodies? If not, what amendments would you suggest and why?*

³⁶ As set out in FSA CP13/7, we have not generally proposed to apply prudential requirements to consumer credit firms, other than debt management firms. The only other firms performing consumer credit activities for which we have consulted on prudential requirements are those performing the new activity of operating an electronic system in relation to lending (P2P lending). For details of our prudential approach for these firms, see CP13/13 and the forthcoming crowdfunding policy statement.

- 7.6** We received over 50 responses to Q17, with almost half of the respondents supporting our proposed metric. The majority of the remaining respondents were also generally supportive of our proposals, and agreed that they are necessary to help us protect the interests of consumers. Where respondents provided comments, they typically covered either the calculation of the volume-based prudential resources requirement or the threshold for not-for-profit debt advice bodies.

Calculation of the volume-based prudential resources requirement

- 7.7** Approximately a quarter of respondents (mainly from the debt management sector) did not agree that 'relevant debts under management' is the most appropriate metric for calculating the volume-based measure. The main reasons given were:
- 'debts under management' is not a good indicator of the risks that a firm poses to consumers
 - a proportion of 'relevant debts under management' is not a reliable method of calculating the costs of winding down a firm
 - it is punitive for firms whose customers are generally making very small monthly payments in debt management plans.
- 7.8** Some respondents suggested alternative calculation metrics, the majority of which were one of the following:
- the number of active customers/debt management plans
 - the amount of client money held/distributed
 - using bonds (a form of insurance that is used for individual voluntary arrangements) as an alternative to, or part of, a prudential requirement.
- 7.9** In addition, some respondents noted that our proposed volume-based measure may restrict growth and does not reflect the fact that firms will have inactive clients.³⁷ One firm also stated that there is a disproportionate gap between marginal increases in the prudential requirement and marginal increases in client money.

Our response

As described in CP13/10, our aim is to align the prudential requirement with the risk of harm to consumers and potential market disruption. We consider that debt management firms pose a high risk to consumers because they hold client money, will typically require more time to wind down than other consumer credit firms, and their potential for having to pay redress is greater.

Our intention was to introduce a prudential metric that is not overly complex and can adequately capture all three of the above-mentioned prudential risks, while also not being open to manipulation.

³⁷ Respondents defined 'active' clients as those who are making payments under a debt management plan, in contrast to 'inactive' clients who are not making payments.

We have assessed the alternative suggestions and whether they align with our aim of a robust risk-based prudential requirement. We do not consider that the alternatives fully address the many prudential risks as effectively as the metric of 'relevant debts under management'. For example:

- Prudential metrics based on the amount of client assets held or the amounts of funds distributed are open to manipulation. To overcome this we would need to bring in an overly complex prudential requirement and onerous reporting. Equally, as outlined above, prudential standards exist for more reasons than just the risk presented by the amount of client assets a firm holds.
- Prudential metrics based on the number of active clients would understate the risks of having inactive clients and could encourage inappropriate firm behaviour when selling debt solutions.

After considering the responses on the marginal impact of our preferred metric, we accept that our original proposal for a flat rate of 0.25% of 'relevant debts under management' does not reflect economies of scale in the prudential risks posed by debt management firms.

For example, as firms grow they do not have to invest proportionally more in systems and controls (such as compliance functions) to manage and mitigate prudential risks. So we propose to adjust our volume-based measure to taper the prudential requirement.

As a result, the revised volume-based measure prudential requirement will be calculated as the sum of:

0.25% of relevant debts under management up to £5m

0.15% of relevant debts under management between £5m and £100m

0.05% of relevant debts under management above £100m.

This will lower the prudential requirement for debt management firms and not-for-profit debt advice bodies with relevant debts under management of more than £5m. This represents the majority of firms that contributed data to our debt management survey last year.

We will not be changing the fixed minimum prudential requirement of £5,000. We consider that this is an appropriate minimum amount given the need to balance our objective of protecting consumers and creating a proportionate regime that does not constrain competition.

For bond insurance, we do not believe that we can rely on the availability of comprehensive policies to negate the need for prudential requirements. However, on a longer-term basis, we are open to further discussions with the industry, or individual firms, about the merits and limitations of bond insurance.

Threshold for not-for-profit debt advice bodies

- 7.10** A number of commercial debt management firms and trade bodies considered that the proposed £1m client money threshold for applying prudential requirements to not-for-profit debt advice bodies is too high, and thought that very few firms would be covered by it.
- 7.11** These respondents considered that the risks to customers posed by not-for-profit debt advice providers who handle client money are similar to those posed by commercial firms operating in the sector, so they should be subject to the same prudential standards.

Our response

We agree that smaller not-for-profit debt advice bodies do pose some similar risks to smaller commercial debt management firms. Equally, however, not-for-profit debt advice bodies have different incentives from commercial debt management firms, which mean that the risk to consumers is lower.

We consider that our proposals, by focusing on commercial debt management firms and the very largest not-for-profit debt advice bodies, are in line with our prudential philosophy to concentrate on entities that pose the greatest risks to consumers. We will be proceeding with our proposals.

Transitional approach to prudential standards

- 7.12** In the consultation we asked:

Q18: *Do you agree with our proposal to apply a transitional approach to prudential standards for debt management firms and some not-for-profit debt advice bodies?*

Responses to consultation

- 7.13** Most respondents were supportive of our proposals.
- 7.14** Some respondents suggested that we should end our transitional prudential regime earlier than 1 April 2017.

Our response

Since most consumer credit firms have no experience of prudential standards, we continue to believe that we should give firms time to adapt to these new requirements. We consider that our proposals provide a suitable transitional period, so we are proceeding with our existing timetable for introducing prudential standards.

This approach is consistent with how we have introduced prudential requirements in the past for other types of firms new to prudential regulation.

8 Proposals for debt management firms that hold their clients' money

This chapter summarises feedback on Q21 and Q22 of CP13/10 together with our response. We have not made any substantial changes to the proposals on which we consulted, although have clarified some aspects in light of comments.

Introduction

- 8.1** Chapter 9 of CP13/10 set out our proposals for debt management firms that hold client money. These included some changes to the previous proposals, including extending the scope of our client money rules to include not-for-profit debt advice bodies and applying most but not all of the rules to smaller firms.
- 8.2** The draft client money rules were set out in Appendix 2 to CP13/10.

Q21: Do you agree with our proposals for debt management firms and not-for-profit debt advice bodies that hold client money? If not, which aspects of the regime do you disagree with and why?

- 8.3** Most respondents were generally supportive of our proposals, and agreed that they will enhance protection for consumers. We did, however, receive a number of detailed comments and requests for clarification, as set out below. These have not caused us to fundamentally change our approach.

Smaller and larger firms

- 8.4** Some respondents suggested that the risks to client money are broadly the same in smaller firms as they are in larger firms, so the full rules should apply to all debt management firms, regardless of their size.

Our response

While we acknowledge that risks to consumers may be broadly similar, we believe that we have achieved an appropriate balance between proportionality and the need for a robust regime.

We are requiring all debt management firms to comply with key aspects of our client money regime, while applying a slightly lighter regime in some areas to firms with smaller balances of client money, to reflect the lower risks in such cases. In accordance with our proposals in CP13/10, a large firm for these purposes is one that held £1m or more of client money at any point in the previous calendar year or expects to do so in the current year.

Payment of interest to clients

- 8.5** Some respondents (mainly not-for-profit debt advice bodies) stated that interest earned on client money is generally very low, so calculating the amount earned per customer could be more costly than the interest actually payable.
- 8.6** One respondent suggested a threshold provision for not-for-profit debt advice bodies whereby the proposed rule would not apply to monies held below a certain amount, with any surplus interest being used for charitable purposes.

Our response

We will not be changing the proposed requirement. Even if a threshold were applied, firms would still be required to calculate and record interest earned per client to determine whether this exceeds the threshold. Also, where interest is earned for the benefit of firms, it creates an incentive for them to hold the money for longer and/or place it in banks on longer terms to generate an income, which is in potential conflict with their safeguarding obligations.

However, where firms only hold small balances of client money for a few days, and any interest that could be earned is negligible from the client's perspective (e.g. a few pence), our rules will not prevent firms from requesting a non-interest bearing bank account. Firms would, as a result, be complying with our rules, even though the interest earned and paid to clients is nil.

When considering whether or not to deposit client money in non-interest bearing accounts, firms should ensure that they pay due regard to their clients' best interests. For example, if a firm is holding a large balance for a long time for a particular client, then it is unlikely to be in the client's best interests for that money to be held in a non-interest bearing account.

Selection of a bank account

- 8.7** Some respondents asked for guidance on how to apply the rules about selecting a bank to hold client money.

Our response

The guidance in our client money rules highlights that a large debt management firms should consider the creditworthiness of the bank it selects to hold client money, and must make a record of the grounds on which it is satisfied as to the appropriateness of that selection. This is because the firm has a duty of care to safeguard the client money it is responsible for, which will include considering whether the bank is appropriately protected.

We have clarified the application of our rule requiring large debt management firms to consider the risks of holding all client money with one bank.

Other possible mechanisms

- 8.8** Some respondents suggested that we should consider other mechanisms for protecting client money. One respondent suggested requiring insurance and another proposed that additional protection could be provided by way of a 'bond'.

Our response

We do not consider that these alternatives would provide more robust protection for customers. They could also result in additional costs to firms, particularly smaller firms with more limited resources, if they had to negotiate insurance.

However, we will keep this under consideration as market practices and the client money regime evolve, and we will review the application of the client money rules if evidence emerges of a viable, appropriate and proportionate alternative that would achieve similar outcomes.

Other issues

- 8.9** Other respondents made the following points:
- As debt management firms will not be covered by the FSCS, the planned review in 2016 should be brought forward.
 - A full and final settlement model³⁸ is inconsistent with the Debt Management Plan Protocol, which does not allow for client money to be held for longer than five days.
 - The requirement for monies received by appointed representatives to be paid into the client bank account no later than the next business day should be extended to three days.

³⁸ In which the firm holds money on behalf of the customer and does not distribute that money promptly, pending negotiating a settlement with the customer's lenders – see CONC 8.7.2R(3).

Our response

Our response in relation to queries raised about FSCS cover is addressed in Chapter 10.

We consider that our rules, which allow firms to hold client money for longer than five days so long as they meet certain requirements, are appropriate. However, as stated in Annex 5, we may look at the suitability of the full and final settlement model in due course.

We do not generally permit appointed representatives to hold client money and see no compelling reason to make an exception in the debt management sector. As noted in CP13/10, a firm that has appointed representatives may have difficulty in properly overseeing how well they handle client money, and hence carry out its obligation to ensure appropriate protections.

Q22: Do you agree with our proposed implementation timetable? If not, please give reasons.

- 8.10** Most respondents to this question did so in relation to the overall timetable for the new consumer credit regime, when in fact the question was limited to the implementation of our client money regime.
- 8.11** Of those that did refer directly to the client money rules, most suggested that we should consider implementing these earlier than planned.

Our response

We are proceeding with our planned implementation timetable with the exception of a transitional arrangement for some not-for-profit debt advice bodies grandfathered into limited permission.

We recognise the risks around firms not having to comply with our client money regime when holding interim permission. However, firms need time to implement the requirements alongside the new prudential and conduct rules. Also, while a firm has interim permission, it remains subject to compliance with provisions of the OFT's Debt Management Guidance dealing with the handling of client money.³⁹

Once we grant a debt management firm full authorisation under Part 4A FSMA and its interim permission ceases to have effect, the client money requirements apply to both the client money held by the firm at that time and to client money received going forwards.

Given that certain not-for-profit debt advice bodies covered by a group OFT licence will not hold an interim permission (they will be grandfathered directly into the limited permission regime on 1 April 2014), we have decided to make a transitional provision so that these firms will not need to comply with the client money rules until 1 October 2014.

³⁹ CONC 12.1.4R.

Changes in relation to CP13/5

- 8.12** In July 2013 we consulted in CP13/5 on a number of changes to parts of the Client Assets sourcebook (CASS). While these changes relate mostly to investment business, some aspects are relevant to debt management firms (CASS 11), and we have made some drafting changes as a consequence.
- 8.13** These include changes relating to acknowledgement letters that firms will be required to send to banks where they deposit client money, among which is a requirement to retain a countersigned acknowledgement letter from the date of its receipt until five years have elapsed following closure of the account.
- 8.14** Another change relates to the proposed template for acknowledgement letters. Although this is unlikely to change significantly, we have decided to delay publishing the template and associated guidance until March to ensure we fully incorporate the feedback to CP13/5. The final rules published with this policy statement indicate that the form of the acknowledgement letter and the accompanying notes will follow.
- 8.15** Other changes we have made are in relation to:
- The rules on secondary pooling events (when a bank where a firm has placed client money fails). We are amending our requirements around secondary pooling events, so that if a firm uses its own money to pay all of its clients the amount of money that would have been available in client bank accounts but for the insolvency of the approved bank, the ordinary secondary pooling rules do not apply. We are giving firms this option as we have seen examples in other industry areas.
 - The rules on calculating the client money requirement. The amendments are intended to ensure a firm captures any other receipts or holdings of client money which would not otherwise form part of the firm's internal client money reconciliation.

9 Second charge loans

This chapter summarises feedback on Q23 in CP13/10, regarding reporting requirements for second charge loans. We have not amended our approach.

- 9.1** In CP13/10, we noted that firms providing second charge loans will be subject to a different regulatory regime in the longer term when the Mortgage Credit Directive (MCD) is implemented.⁴⁰ We will be consulting later this year on the rules necessary to transpose this directive. It has to be implemented by early 2016 and introduces new conduct requirements for both first and second charge mortgage lending.
- 9.2** In view of this, we proposed not to impose regular reporting requirements during the interim period on firms providing second charge loans.⁴¹ The exception to this is complaints reporting, which will apply once a firm is fully authorised for consumer credit lending.

Q23: Do you agree with our suggested amendments to the reporting requirements for second charge loans?

- 9.3** Respondents were generally in favour of our proposals, recognising our intention to minimise burdens on firms until the longer-term regime comes into effect.
- 9.4** However, most consumer groups and some individual respondents did not support the proposals as they felt that the absence of data might inhibit our ability to take action to address issues in the market that could cause harm to consumers.

Our response

Our proposal not to introduce regular reporting requirements on second charge firms which are not currently subject to such requirements does not mean that we will be unable to supervise these firms robustly.

Our intention is to minimise one-off costs in the interim period, recognising that the firms will be subject to a different regulatory regime in the longer term once the MCD is implemented. We do not wish to impose disproportionate or unnecessary costs on firms, so we have not amended our approach.

⁴⁰ A second charge loan is a loan that is secured on a customer's property where that customer already has a mortgage. Such loans are currently regulated under the CCA unless a specific exemption applies.

⁴¹ Reporting requirements may already apply to firms authorised for mortgage lending, who also offer second charge loans. These firms will continue to provide regular reporting to us.

We will be able to request ad hoc data where we feel it is necessary as part of our day-to-day supervisory work, or to support our policy work on the longer-term regime.

10 Complaints to the ombudsman service and redress for consumers

This chapter summarises feedback on Q24, Q25 and Q26 of CP13/10 together with our response.

We have clarified our proposals and responded to queries, some of which were not related to the policies we consulted on. We have not made any significant changes to our proposals as a result of feedback, although we have made clear that the complaints reporting requirement does not apply to firms with permission only for credit-related regulated activity until 1 October 2014 at the earliest, in line with the transitional arrangements for periodic reporting.

Our proposal for micro-enterprises

- 10.1** We consulted on our proposals to allow all micro-enterprises to complain to the Financial Ombudsman Service (the ombudsman service) about consumer credit activities⁴² from 1 April 2014.
- 10.2** In the consultation we asked:

Q24: Do you agree with our proposal to allow all micro-enterprises to complain to the ombudsman service?

Responses to the consultation

- 10.3** The majority of respondents welcomed our proposal. Queries were raised about eligibility, which included the current definition of a micro-enterprise.

Our response

We will allow all micro-enterprises access to the ombudsman service.

The current definition of micro-enterprise that applies for the ombudsman service's Compulsory Jurisdiction (CJ) will also apply for the purpose of activity currently covered by the Consumer Credit Jurisdiction (CCJ). This excludes enterprises with 10 or more employees or with a turnover or annual balance sheet over €2m, so these firms will not be eligible to complain.

⁴² Credit-related regulated activities are limited to activities carried on with individuals or partnerships of two or three individuals. It should be noted that the CJ applies not only to credit-related regulated activities, but also lending money more generally, which potentially captures lending to companies or partnerships consisting of four or more persons, if they are micro-enterprises.

Our proposal for not-for-profit debt advice bodies

- 10.4** We consulted on our proposal to include not-for-profit bodies providing debt advice within the CJ. We consider that these advice bodies provide a valuable service for some vulnerable consumers. Including not-for-profit bodies in the CJ would help to promote consumer confidence and enhance consumer protection while not overburdening them.
- 10.5** In the consultation we asked:

Q25: Do you agree with our proposal to include not-for-profit bodies providing debt advice in the Compulsory Jurisdiction?

Responses to the consultation

- 10.6** The majority of respondents welcomed our proposal to include not-for-profit bodies providing debt advice in the CJ, but there was concern over the cost implications. If they were subject to both the general levy and individual case fees, this would add unnecessary cost burdens for bodies that are already under significant financial constraint.

Our response

We will include these not-for-profit bodies in the CJ. We do not want to impose unnecessary burdens on them and the ombudsman service has received very few complaints to date relating to not-for-profit debt advice bodies that are already subject to the CCJ.

We issued a consultation in October 2013 (CP13/14) on fees⁴³ which proposed that not-for-profit bodies providing debt advice should be exempt from paying the general levy. We plan to publish a policy statement in response to this consultation in March. The ombudsman service consulted in January 2014 on a case fee of £0 for not-for-profit debt advice bodies with limited permission.⁴⁴

Other issues raised by respondents

- 10.7** We received some queries about other issues, such as the eligibility of consumers to complain about business conducted before the transfer of regulation to the FCA. There were also questions about loans that are exempt from regulation under the CCA and so would not be regulated by the FCA.
- 10.8** Queries were raised about whether individuals that were being chased for unpaid debts because of mistaken identity could complain to the ombudsman service.

Our response

Complaints relating to the behaviour of consumer credit firms before 1 April 2014, while the firm was licensed by the OFT but not authorised by the FSA/FCA, will continue to be covered by the ombudsman service.

⁴³ <http://www.fca.org.uk/news/cp13-14-regulatory-fees-and-levies>

⁴⁴ <http://www.financial-ombudsman.org.uk/publications/2014-ourplans.pdf>

The CJ currently covers not only regulated consumer credit activities but also certain unregulated consumer credit activities. Consumers can complain to the ombudsman service if the activity is covered by the CJ and we will continue this approach.

Rules in the Dispute Resolution: Complaints sourcebook (DISP) set out who is eligible to complain to the ombudsman service. Under these rules, a person who is not a customer of a firm, but from whom a firm has mistakenly sought to recover payment under a credit agreement or consumer hire agreement, can already complain to the ombudsman service.⁴⁵ We will continue this approach.

Changes to recording, reporting and publishing complaints

- 10.9** We consulted on our proposal for extending the complaints recording, reporting and publishing requirements to consumer credit firms who are not currently FSMA-authorized. We will specifically require firms to record each complaint they receive, including the way in which it is resolved, and to retain these records for three years.
- 10.10** We proposed that, once firms are fully authorized, they should report, and where appropriate publish, a relatively small amount of complaints information. We proposed to make minor changes to the existing reporting form and to add a new section, 'Part B', to cover the new consumer credit activities.
- 10.11** In the consultation we asked:

Q26: Do you agree with our proposals on recording, reporting and publishing complaints?

Responses to the consultation

- 10.12** Most of the respondents to this question supported our proposals, but there were some specific areas of concern.
- 10.13** There were various concerns about the additional costs that firms would incur, especially smaller firms with limited financial and non-financial resources. The requirement to record all complaints was seen as a significant administrative burden that appeared to be unnecessarily complex.
- 10.14** The definition of a 'complaint' was queried by a number of respondents as they felt the current definition in our Handbook was relatively broad and could skew the figures as it would include complaints whether or not they were justified.
- 10.15** A number of respondents had views on the requirements for recording and reporting complaints and the possibility of them being imposed on a proportionate basis depending on the size of the firm and the number of complaints they receive.
- 10.16** Queries were raised about the timing for implementing the reporting requirements for firms, including whether these were to be imposed from 1 April 2014, from the date the firm was

⁴⁵ DISP 2.7.6R(12).

fully authorised or had a full variation of permission, or six months after full authorisation or variation of permission.

- 10.17** There were also a number of questions relating to the content of the complaints form, focusing on the categorisation of complaints about debt collection and the first reporting period for consumer credit complaints.

Our response

We consider that our proposals are proportionate, for the reasons explained in CP13/10.

Our rules do not require complaints to be in writing, and firms cannot impose this on consumers. The recording, reporting and publishing requirements do not apply to complaints resolved by the end of the business day following the day the complaint was received.

A complaint is defined in the Glossary to our Handbook and the definition is deliberately broad. Firms must report complaints against themselves, not against other parties, a point of concern for some respondents. We do not consider that additional or reduced requirements are appropriate depending on the size of the firm and the number of complaints received.

From 1 April 2014, consumer credit firms that have not to date been FSMA-authorized will be required to record complaints. However, the new requirements to report and publish consumer credit complaints will not apply to:

- consumer credit firms with only an interim permission
- credit-related regulated activities of existing FSMA-authorized firms with only an interim variation of permission.

The requirements to report and, where appropriate, publish consumer credit complaints will not apply until firms have full authorisation or variation of permission, or until 1 October 2014 if later. This is in line with our approach for other reporting requirements and we believe it should give firms sufficient time to introduce the necessary systems changes.

We have clarified how firms should report complaints about debt collection.

A firm's first report after it receives full authorisation or variation of permission, or 1 October 2014 if later, will include consumer credit complaints received on or after that date. Firms⁴⁶ will submit their data using our 'GABRIEL' electronic reporting system and this will include instructions on completing the return.

⁴⁶ Except credit unions.

FSCS cover

10.18 Although we did not ask a question about the FSCS, a number of respondents commented on the exclusion of consumer credit activities from the scheme.

Responses to consultation

10.19 Some respondents to CP13/10 suggested (in relation to our proposals on debt management firms and not-for-profit debt advice bodies that hold client money) the need to include debt management firm activity in FSCS cover as this was an area that poses a risk to consumers.

10.20 Respondents were not convinced that our proposed client asset requirements were sufficient to protect consumers and thought that the position regarding FSCS cover needed to be reviewed earlier than 2016, the date we had proposed. Other respondents suggested that FSCS cover would mean that the client asset rules could be lighter.

Our response

The FSCS is a scheme of last resort, funded by the industry, not an alternative to regulation. Firms are responsible for meeting their own liabilities to their customers, and should not rely on other firms to meet these liabilities via the FSCS. We seek to reinforce this by our regulatory approach and by our rules that govern the circumstances in which FSCS can pay compensation.

We do not propose to introduce FSCS cover on the transfer of consumer credit to the FCA, but we will keep the position under review, particularly for the debt management sector. There are a number of other protections that will apply to relevant consumers. We still plan to review FSCS cover in 2016.

11 Enforcing our rules and tackling financial crime

In CP13/10 we proposed to apply the same general enforcement approach to consumer credit activities as we apply to other regulated activities. We did not receive any comments on this, so have not made any changes to our proposal.

Enforcing our rules

- 11.1** Table 1.3 in Chapter 1 summarises when the new requirements come into effect.
- 11.2** From 1 April 2014, firms will be subject to our high-level rules, including PRIN, SYSC and GEN.
- 11.3** Most of the CONC rules will also come into effect from 1 April 2014, on the basis that we are carrying across existing CCA provisions and OFT guidance. In areas where we are introducing new rules (see next paragraph), we are providing specific transitional periods to enable firms to amend systems and procedures.
- 11.4** The transitional period for the additional requirements for HCSTC is until 1 July 2014 (apart from the risk warning in online and other electronic financial promotions which comes into force on 1 April). The position on transitionals for P2P platforms is set out in Table 6.1.
- 11.5** Non-compliance is not an option for firms at any time. We can and will enforce rule breaches from 1 April 2014 where appropriate. Where CCA provisions or OFT guidance have been carried across into CONC rules, we have said that, until 1 October 2014, a firm will not breach a rule in CONC to the extent that it can demonstrate that it is complying with a 'corresponding rule' – in other words, a specific provision in or under the CCA, or a provision in specified OFT guidance, that is substantially similar in purpose and effect to the CONC rule. This six-month transitional is only available if the firm is complying fully with the corresponding rule and can demonstrate this if challenged.
- 11.6** Firms are also expected to comply with the 'spirit' of our rules – in other words, the intention behind them, and not merely the 'letter' of the rules. Failure to do so may be a breach of our Principles for Businesses, and we can take action as part of our judgment-based approach to supervision and enforcement. The high-level rule in GEN 2.2.1R makes clear that every provision in the FCA Handbook must be interpreted in the light of its purpose.

Firms with interim permission

- 11.7** Some of the rules will not apply to consumer credit firms while they hold an interim permission (or interim variation of permission):
- The CASS rules will not apply to a debt management firm with interim permission, provided that the firm acts in accordance with relevant OFT guidance.⁴⁷
 - The prudential requirements for debt management firms (CONC 10) will also not apply while a firm has an interim permission. Transitional arrangements will apply from when a firm is authorised until 1 April 2017, when the full prudential requirements will apply.
- 11.8** The requirements relating to approved persons, controllers, periodic reporting and complaints reporting and publication will not apply to a firm until it is authorised (either full authorisation or limited permission).

Financial crime

- 11.9** Tackling financial crime is a key part of the FCA's remit. To do this we look at measures that firms take to monitor, detect and prevent financial crime.
- 11.10** All consumer credit firms must comply with legal and regulatory obligations to deter and detect financial crime. This includes money laundering. Our rules will require firms to establish and maintain appropriate and risk-sensitive policies and procedures, and to identify, assess and mitigate the risk of money laundering in their business.
- 11.11** From 1 April 2014, we will be responsible for supervising consumer credit firms that are subject to the Money Laundering Regulations (MLRs), except those firms that are supervised by certain professional bodies and certain money service businesses supervised by HMRC. These firms will not have to register separately for this or pay an additional fee.
- 11.12** Consumer credit firms that are subject to the MLRs will have to appoint a money laundering reporting officer (MLRO), which is a controlled function under our approved persons regime.⁴⁸
- 11.13** The Joint Money Laundering Steering Group issues guidance⁴⁹ for the UK financial sector on the prevention of money laundering and combating terrorist financing. The Group is producing specialist sectoral guidance for consumer credit firms which complements its main guidance. It has just closed consultation on this guidance and the final version will be published on its website once complete.⁵⁰
- 11.14** We have published *Financial Crime: a guide for firms*⁵¹, which brings together all our guidance on financial crime from our thematic reviews and other work, and sets out what regulated firms can do to reduce their financial crime risk. There is also further information on the fighting financial crime section of our website.⁵²

⁴⁷ Paragraphs 3.42 and 3.43 of OFT366rev, *Debt management (and credit repair services) guidance*.

⁴⁸ As set out in Table 3.2 in CP13/10.

⁴⁹ <http://www.jmlsg.org.uk/industry-guidance/article/jmlsg-guidance-current>

⁵⁰ <http://www.jmlsg.org.uk>

⁵¹ <http://fshandbook.info/FS/html/FCA/FC/link>

⁵² <http://www.fca.org.uk/about/what/protecting/financial-crime>

12 Next steps

- 12.1** In this policy statement we have set out whether our rules have changed since we consulted on our proposals last year. Firms can use this, and our Handbook of rules and guidance, to see what our expectations are. We expect all consumer credit firms to comply with our rules from 1 April 2014 or the later dates set out in Table 1.3.
- 12.2** Over the next year we will be consulting on a number of related policy proposals that will have an impact on some parts of the consumer credit industry (including the new senior and certified persons regimes and implementation of the MCD, as well as engaging with firms and individuals affected by our new rules to help them in the transition to our regime.

What should you do now?

Becoming authorised

- 12.3** We will start authorising firms from 1 April 2014. It will take some time to process the significant number of applications we expect to receive so, as explained in Chapter 2, we will notify firms to let them know when they should apply – firms with interim permission will not be able to apply until we notify them.
- 12.4** In the meantime, if you have an OFT licence and want to continue carrying on the credit activity covered by your licence from 1 April you must, subject to limited exceptions, have interim permission to do so. If you do not have interim permission and you continue to carry on consumer credit business, you could be breaking the law and you may be subject to enforcement action by us.
- 12.5** For more information on applying for interim permission please see our website.

Getting help

- 12.6** We will be publishing useful information to help you prepare to be regulated by us and to clarify which parts of our Handbook of rules and guidance are relevant to you. Please see our website for more details.
- 12.7** In March we will be broadcasting two webinars, giving you the opportunity to ask us questions, and we will publish a video on our website to guide you through how to apply for authorisation on our online system, called Connect. We will also hold a regional event in Sheffield for firms and other stakeholders.
- 12.8** If you have any queries please call us on 0845 606 9966 or email us at fcc@fca.org.uk.

Upcoming publications

Crowdfunding consultation

- 12.9** Crowdfunding is a way in which people, organisations and businesses, including business start-ups, can raise money through online portals (crowdfunding platforms) to finance or refinance their activities and enterprises. Some crowdfunding activity is unregulated, some regulated and some is exempt from regulation.
- 12.10** We will be publishing a policy statement setting out our crowdfunding rules in March 2014. This follows our consultation last October on rules to protect investors on (P2P) lending platforms.
- 12.11** Firms running P2P platforms also need to consider our rules to protect borrowers who arrange consumer credit on these platforms. These rules and their effective dates are set out in Table 6.1 in Chapter 6.

Our annual fees and levies

- 12.12** We will set out our authorisation fees and consult on our periodic fee rates at the end of March 2014.

Risk outlook

- 12.13** Our annual risk outlook will present our view of the risks in the markets we regulate. This will include discussion of ongoing and emerging risks in consumer credit markets. We will publish the risk outlook in March 2014.

FCA business plan 2014/15

- 12.14** Our business plan 2014/15 will set out our priorities for the next year across all of our responsibilities and functions as a regulator, including our high-level plans for consumer credit. We will publish our plan on 31 March 2014.

Future publications

- 12.15** We will publish materials on various key issues and topics in consumer credit from April onwards. These publications will reflect evidence-gathering and analysis we have been carrying out to build an informed overview of consumer credit.
- 12.16** The aim of this has been to quickly build our knowledge of consumers, firms and competition across the consumer credit market, so that we are ready and in a strong position to take over regulation of consumer credit sectors from April.
- 12.17** As part of this evidence-gathering, we have commissioned consumer and firm-facing research on a range of issues in consumer credit. Drawing on this research, these publications will cover issues of particular importance to us and should help make clear to consumers and firms what our priorities are and what they can expect from us.

Price-capping consultation

- 12.18** In July this year we plan to consult on proposals for a cap on the cost of HCSTC.

Memoranda of understanding

- 12.19** As we stated in the consultation paper, we agree that liaison with LATSS and DETINI is important to the effectiveness of the consumer credit regime and we are agreeing a memorandum of understanding with them. It will help develop this new working relationship and will establish a

framework to promote co-operation and information-sharing. We will work together to make the most of opportunities to share intelligence and information where potential conduct issues are identified, to help to identify and tackle financial crime in consumer credit businesses, and to liaise closely in relation to carrying out enforcement action.

- 12.20** As part of our preparations for the new regime, we are also updating the memoranda of understanding we have with other bodies.

13 Feedback on FCA QCP 13/18

This chapter summarises feedback on the Quarterly Consultation CP13/18 and our response. We have amended our proposal in relation to the new complaints reporting form for credit unions, so that it will come into force from 1 April 2016 for complaints received during the 12 months from 1 April 2015.

The quarterly consultation

- 13.1** Chapter 2 of the Quarterly Consultation CP13/18⁵³ set out further proposed amendments to our Handbook and non-Handbook guides in relation to the transfer of consumer credit regulation:
- Handbook text: SYSC, GEN, COBS, MCOB, SUP, CREDS and CONC plus the Glossary of definitions
 - Non-Handbook guides: BSOG, EG, FC and PERG.
- 13.2** In relation to CONC, we proposed to extend the application of our requirements in relation to 'agents' to persons carrying on any credit-related regulated activity. The additional proposed amendments were mostly minor and technical, and there were no substantive changes to the policy underlying CP13/10.

Feedback on QCP

Q2.1: Do you have any comments on the proposed amendments?

- 13.3** We received two responses. One respondent agreed that a simplified approach to complaints reporting was preferable for credit unions.
- 13.4** The other questioned the proposed requirement in SUP 15.3 to notify a breach of any CCA requirement. In particular, it was pointed out that firms only have to notify a 'significant' breach of FCA rules.

Our response

We have amended the SUP 15 requirement accordingly.

⁵³ CP13/18, *Quarterly consultation No. 3* (December 2013).

We have also amended the transitional provision in relation to the new complaints reporting form for credit unions, so that it will come into force from 1 April 2016 for complaints received during the 12 months from 1 April 2015. This is intended to simplify the process for credit unions.

We have extended the application of our requirements in relation to agents (CONC 14) as proposed.

We have not made any other changes to what was proposed in the QCP.

Annex 1

List of non-confidential respondents to CP13/10

118 118

Association of Chartered Certified Accountants (ACCA)

Association of Professional Compliance Consultants (APCC)

Access Mortgage Underwriting Limited

Action for Debt Limited

ActSmart

Advertising Association

Advertising Standards Authority (ASA)

Advice NI

Aldershot Citizens Advice Bureau

Amaford Solutions Limited

Amigo Loans (Nova)

Anything Money Limited

Ariste Holding Limited

Arminius Associates

Arts Council England

Association of Bridging Professionals (AOBP)

Association of British Credit Unions Limited (ABCUL)

Association of British Insurers (ABI)

Association of Finance Brokers

Association of Professional Financial Advisers (APFA)

Association of Short Term Lenders (ASTL)

AXA UK Group

Access Europe companies (Cash Gen. Limited & Cheque Centres Limited)

Bar Council

Bates Wells & Braithwaite London LLP

BCCA

BDO LLP

Belhaven Bikes

Bexhill UK Limited

BGL Group

Birmingham City Council

Birmingham Fair Money

Blackwood Finance Limited

BPH Wealth Management LLP

Bridgebank Capital (IM) Holdings Limited

Bright Oak Limited

Brighton & Hove City Council (Senior Baliff)

British Bankers' Association (BBA)

British Insurance Brokers' Association (BIBA)

British Retail Consortium (BRC)

British Vehicle Rental and Leasing Association (BVRLA)

Building Societies Association (BSA)

Burnley Savings and Loans Limited

Care Finance & Loans

Cash Converters (UK) Limited

Cash Shop Limited

Central Loans Limited

Centrepont

Chartered Accountants Regulatory Board (CARB)

Cheshire West Citizens Advice Bureau

Christians Against Poverty (CAP)

Church Action on Poverty

Churches Regional Commission for Yorkshire and the Humber

Citizens Advice

Citizens Advice Cymru

Citizens Advice Northern Ireland

Citizens Advice Scotland

Civil Court Users Association (CCUA)

Cognizant Technology Solutions Limited

Community Development Finance Association (CDFA)

Community Housing Cymru Group (CHC Group)

Consumer Council

Consumer Credit Trade Association (CCTA)

Consumer Finance Association (CFA)

Consumer Futures

Core Logic

County Finance

Coventry Citizens Advice Bureau

Creative Scotland

Creative Sector Services CIC

Credit (Hull) Limited

Credit Services Association (CSA)

Debt Advice Foundation

Debt Advisor Limited

Debt Free Direct

Debt Help & Advice Limited

Debt Recovery Bureau LLP

Debt Resolution Forum (DRF)

Debt Solutions Consultancy

Debt Wizard Limited

Debtwise

Decka Limited

Debt Management Standards Association (DEMSA)

Derby Citizens Advice & Law Centre

Direct Line Group

East Dorset Citizens Advice Bureau

Eccles Savings & Loans Limited

Ernst & Young LLP

Eversheds LLP

Excel Collection & Enquiry Services Limited

Exeter Citizens Advice Bureau

Fairpoint Group plc

FH Debt Solutions Limited

Fidelity Works Limited

Finance and Leasing Association (FLA)

Finance Otherwise Limited

Financial Services Consumer Panel

Financial Services Practitioner Panel

First Independent Finance Limited

Forum of Credit Unions in Somerset

Geo. A. Payne & Son Limited

Glasgow City Council Trading Standards Service

Gosport Citizens Advice Bureau
Gregory Pennington Limited
Guardian Finance Limited
H F Welch & Son Limited
Harrington Brooks
Hogan Lovells International LLP
Homes for Scotland (HFS)
Home Retail Group Financial Services
Hull & East Riding Citizens Advice Bureau
Hull Business Development Fund Limited
I C Loans Limited
ICAEW
ICAS
Information Commissioner's Office (ICO)
Institute of Credit Management (ICM)
Institute of Financial Services (IFS) University College
Institute of Money Advisers (IMA)
Insurance Development and Training Limited (IDT)
Interfinancial Limited
International Underwriting Association
Irish League of Credit Unions (ILCU)
ISBA
Jubilee+
Just Money Campaign
Kent County Council
Kindwater Limited
Lancashire West Citizens Advice Bureau

Law Society of Scotland – Consumer Law Committee

Law Society of Scotland – Investor Protection Sub Committee

LEA Financial Services Limited

Lean on a Friend Limited

Leeds Citizens Advice Bureau

Leeds City Council

Legal & General Group plc

Lending Standards Board (LSB)

Letchworth Golf Club

Liverpool Victoria Insurance Company

Loans 2 Go Limited

Local Trust

Madiston plc (LendLoanInvest)

McM Financial Management Limited (Sesame Limited)

Micro Lend UK Limited

Money Advice Service

Money Advice Scotland

Money Advice Trust (MAT)

Money Charity

Money In Advance Limited

Money Village

Moneyline

MoneyPlus Group Limited

Mutual Clothing & Supply Company Limited

My Home Finance

National Pawnbrokers Association (NPA)

Newcastle upon Tyne Citizens Advice Bureau

North East England (Collective)

Northern Rock Foundation

Odm Limited

Openwork

Ordo Franciscanus Saecularis

P J Sutton (Insurances) Limited t/a Douglas Insurance Service

P&L Warren Limited

PacNet Services

Papaverum Capital Limited

Pavey Group

Payplan

PDB UK Limited

Peer-to-Peer Finance Association (P2PFA)

Pinsent Masons LLP

PricewaterhouseCoopers LLP (PwC)

Provident Financial plc

Radio Advertising Clearance Centre (RACC)

RadioCentre

RateSetter

Royal Bank of Scotland

rebuildingsociety.com

Regulatory Finance Solutions Limited

Retail Motor Industry Federation (RMI)

Royal Institution of Chartered Surveyors (RICS)

Ryehill Wealth Management Limited

SA Compliance Management Limited

Salford City Council

Santander UK

Scotcash

Sedgemoor Citizens Advice Bureau

Selby Citizens Advice Bureau

Sinclair Finance & Leasing Co Limited

Skyline Direct

Smartloan Limited

Society of Chief Officers of Trading Standards in Scotland

Solicitors Regulation Authority (SRA)

South East Consumer Empowerment Partnership

Speedy Dosh

Squire Sanders (UK) LLP

SRC Transatlantic Limited

St James's Place Wealth Management

Star Loans/Arrow Loans

StepChange Debt Charity

Stevenage Citizens Advice Bureau

Swansea Council Social Inclusion Unit

Syntomy

Thomson Consultancy (TTC)

Threesixty Services LLP

Times General Supply (Plymouth) Limited

Trading Standards Institute (TSI)

Transact

Trowers & Hamlins LLP

Tunbridge Wells Citizens Advice Bureau

Twyford Developments Limited

Txtloan Limited (MyJar)

UK Cards Association (UKCA)

UK Credit Reference Agencies (Call Credit, Equifax, Experian)

Umbrella Loans Limited

Uncle Buck Payday Loans LLP

Unison

Veritec Solutions

Vincent Bond & Co Limited

West Berkshire Citizens Advice Bureau

Westcot

Which?

Wider Plan

Wizzcash

Wonga

WorldPay (UK) Limited

Zero-credit Limited

Zopa

Alan Leeke

Andrew Smith

Andy and Sheila Burton

Barry Quinnell

Bikram Rai

Cara Sherliker

Chris Thorp

Christine Harland

Clive Betts MP

Declan Meenan

Emma Spruce

Fiona Mactaggart MP

Gary Urquhart

Giselle McCarthy

H M Walker

Hugh Henderson

J Dunn

Jeff Brown

Jill Appleton

John Christiansen

John Fehr

Michael Hockaday

Mick McAteer

Nick Lord

Parch./Reverend Gethin Rhys

Paul Blomfield MP

Peter Fletcher

Ray James

Ray Taylor

Rt Hon Simon Hughes MP

Sarah E. Brown (Dr.) & Judith Dahgreen

Tim Knight

Tony Clements LLB

Wayne Pyrah

Annex 2

List of non-confidential respondents to QCP13/18

Finance & Leasing Association (FLA)

Irish League of Credit Unions (ILCU)

Annex 3

Feedback (and our response) on Q27: Do you agree with the costs and benefits identified?

- 1 This chapter summarises the feedback on our cost benefit analysis (CBA) in CP13/10. It also sets out our response and changes we have made to the CBA.
- 2 We explained in CP13/10 that the CBA we are required to carry out in accordance with section 138I of FSMA is to determine only the additional costs over and above those incurred because of the consumer credit regime already in place under the CCA and the OFT's guidance.
- 3 The CBA carried out by Europe Economics (EE) presented an estimate of the costs and benefits of the package of proposals consulted on in CP13/10. However, EE's estimate of the benefits only covers reductions in 'observed' detriment (i.e. detriment consumers are aware of and attribute to some consumer credit activity). Many forms of detriment are 'unobserved', for example, where borrowers are unaware they are paying in excess of a competitive price, and these have not been estimated. Similarly, EE did not estimate the cost to firms and consumers of prevented transactions that would not have led to consumer detriment.
- 4 In its analysis, EE concluded it was not possible to estimate these benefits and costs because of limitations in the availability of data, limitations in the quality of data that was available, and in some cases inherent difficulties in analysing the complex market outcomes.
- 5 We summarised EE's key conclusions in Annex 5 in CP13/10 and also published its report separately. We encouraged those interested in the CBA to read the EE report itself for completeness rather than simply relying on our summary of its findings.
- 6 In CP13/10 we asked:

Q27: Do you agree with the costs and benefits identified?

- 7 This policy statement also includes a number of policy amendments. We have assessed each of the amendments in turn against our requirements for CBA and conducted further analysis where required. We provide in Table A3.1 those policy amendments that we believe result in costs of zero or minimal significance.
- 8 We have also set out those policy amendments which we believe would give rise to material changes and we have re-estimated our CBA on this basis. We summarise each of these changes in turn in paragraphs 20 to 33, highlighting relevant chapters and explaining how the analysis has been updated. There are three main areas:
 - proposed change to authorisation fee structures
 - change in the metric used to calculate prudential requirements for debt management firms

- additional debt management guidance.

Summary of feedback to the CBA in CP13/10 and our response

- 9 We received over 70 responses on the CBA in CP13/10. Some of these agreed with many of the main issues we identified in the CBA and provided no further comment.
- 10 There were a number of areas where respondents expressed some concern. For example, several respondents said that we should undertake more detailed analysis of sectors other than HCSTC. We explain this in more detail in paragraphs 14 and 15 below.
- 11 The main areas of feedback were on:
- the analysis of costs to firms
 - market exit
 - impacts on low income consumers.
- 12 We explain the feedback we received in these areas in paragraphs 15 to 18 below.

Data on HCSTC

- 13 A number of industry responses in the HCSTC sector questioned our evidence base for the CBA and the logic that underpinned our approach. In particular, they pointed to a number of reforms to the sector that came into effect after the evidence we used, in particular the OFT report and the Bristol report⁵⁴ had used data from 2012. They suggested these reforms had changed industry behaviour. They also suggested that there was insufficient evidence that our proposals will deliver benefits to consumers.

Our response

While we welcome any reforms already in place to improve consumer outcomes, we do not believe this undermines our analysis of firms' business models. In CP13/10 we cited a range of evidence, including from consumer groups, charities and the ombudsman service, which all indicated a sharp *increase* in problems in 2013, and we believe that firms' business models played a role in this. The Department for Business, Innovation & Skills (BIS) review of firms' compliance with the self-regulatory codes in late 2013 also suggested chronic problems. The updated analysis provided by the CC⁵⁵ shows this market is growing quickly, and as such, the scale of the possible detriment has grown. Our proposals are intended to tackle this detriment and therefore deliver benefits to consumers.

It is worth re-stating our original view in CP13/10 that there are, and remain, limitations to the availability and quality of data, and in some cases inherent difficulties in analysing the complex market outcomes. We also stated that further estimation of costs and benefits would have required substantial data gathering and analysis, which would not have reduced the uncertainty of the costs and benefits sufficiently to affect our view that our proposals are beneficial. To the extent that industry behaviour has improved, it is anticipated

⁵⁴ a Government commissioned report carried out by the University of Bristol concerning the potential effects of a total cost of credit cap.

⁵⁵ <http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/payday-lending>

that the rules will have less impact on firms than they otherwise would. But that does not detract from the reasons for placing appropriate controls on rollovers and CPAs, whose potentially harmful effects are acknowledged by both firms and consumer groups.

More fundamentally, we see no meaningful challenge to the wider logic within the CBA that unaffordable lending is bad for consumers. Our policy proposals flow from that standpoint, informed by regulatory experience and academic and stakeholder research on indebted consumers both here and abroad.

Main areas of CBA feedback

Costs to firms

- 14 A number of respondents disagreed with our estimate of costs. Some stated that we had significantly understated both the one-off and ongoing costs to firms. In particular, respondents felt that we had underestimated costs relating to system updates and costs relating to changes in practice because of the introduction of the new rules.
- 15 Some of this feedback focused on smaller firms and stated that they would struggle to operate within the new regime. The ongoing compliance costs were thought to be unsustainable and would lead them to exit the market. The additional costs stem from a combination of the prudential rules, client asset and reporting requirements, as well as more stringent supervision of standards already put in place by the OFT.

Our response

Our estimate of costs to firms notes that many will face higher costs than under the existing regime and that this might lead to some market exit. However, we note that these costs will drive higher standards in the sector and result in reductions to identified detriment for consumers, such as unsuitable sales, unsuitable advice and loss of client money. We consider that our rules achieve the right balance between costs to firms and consumers and the benefits derived in terms of reductions in unaffordable borrowing, poor-value credit products, conflicts of interest and the risk of loss of client assets.

Despite this, we note some of the comments raised by respondents around the estimated costs imposed on firms in the form of ongoing compliance costs, and we understand their concerns.

Some of our policy amendments will reduce costs in general, and in some cases small firms will benefit. Many of the amendments made in how we carry across OFT guidance are to help clarify requirements for firms, and we expect this will make it easier for firms to comply with our expectations.

We note that authorisation fees are a significant cost for firms. The fees initially proposed for firms in CP13/10 and CP13/14 have been amended. As reported on our website, we have listened to the views of firms via the consultation process and from our roadshows and as a result we have reduced the proposed application fees for small firms. Further information can be found in the

supplementary consultation.⁵⁶ This takes into consideration the comments raised around the proportionality of fees in relation to the size and complexity of the firm.

Market exit

- 16** A number of respondents said that the CBA has significantly underestimated the impact of the regime on the level of market exit. The feedback was that costs to firms, such as having to comply with rules, are disproportionately high, especially for some smaller firms. These increased costs and regulatory requirements would force smaller firms out of the market. Some of these respondents were concerned that this could have detrimental effects on consumers by limiting choice.
- 17** Others thought the CBA focused too heavily on the online HCSTC category, and did not account for high-street firms that would leave the market. A couple of respondents noted that the level of authorisation and annual fees imposed would be a contributing factor to the level of market exit. They felt that some of the smaller firms would not be able to afford the new fees. The anticipated fees were not proportional to firm size and would, therefore, cause firms to pull out of the market.

Our response

We accept that market exit will occur as a result of our policy. Our CBA said that this varies between sectors but could be between 5% and 35%, with the highest level of exit being in the HCSTC market. In the CBA we also considered the impact of the market exit on consumer outcomes. We accept that the new regime will drive market exit and, as for all markets, we will monitor consumer outcomes to ensure that the regime achieves its objectives. For all sectors, apart from HCSTC the level of market exit should not affect the availability of credit for consumers since high-quality firms will be able to expand their services and the minimum standards put in place will drive greater competition on quality and price. In all cases, our proposals should improve consumer protection and the quality of service provided to consumers.

The CBA and the compatibility statement also analysed the impact of our proposals on competition in the sector. The CBA noted that, although our proposals are likely to cause some firms to exit, these are mostly marginal businesses and the overall number of firms remains high enough to provide a competitive constraint, although we do expect a higher level of market exit in the HCSTC sector. In other sectors, such as bank lending, non-bank lending and consumer hire there is sufficient competition between providers to limit the impact of market exit on consumers.

As noted in the compatibility statement, the proposals are principally intended to advance our consumer protection objective, but we have taken care to design our proposals so that they target regulatory requirements where they

⁵⁶ CP13/14 on which we asked for comments by 16 January 2014 for the final response to be published in March 2014.

are needed to secure an appropriate degree of consumer protection while minimising any adverse effects on competition.

Low-income consumers

- 18 A few respondents felt that our proposals would risk increasing detriment for low-income consumers who, generally, do not have the safeguards and buffers that protect better-off consumers. They felt we did not consider that firms exiting the market could limit access to consumer credit for low-income consumers.

Our response

CP13/10 included an Equality Impact Assessment which looked at the impact of our proposals on different protected groups. The CBA in CP13/10 also provided additional analysis of the effects of our proposals on particular consumer groups including those with low income.

EE's assessment noted that the package of proposals, particularly for HCSTC will reduce access to credit for up to 30 per cent of consumers initially. For some of these consumers, not having access to credit could be beneficial in the long-run through avoidance of debt spirals or unsustainable borrowing. However, the analysis also notes that the implications of having or not having access to credit are complicated.

In addition, the analysis shows positive impacts for consumers, including low-income consumers, as a result of the entire policy mix across all sectors. Consumers are protected from unaffordable borrowing, poor-value credit services, conflicts of interest and by reducing the risk of detriment from loss of client assets. These problems will also be addressed through the FCA's enhanced supervision and enforcement powers.

Policy amendments

Zero costs or minimal significance

- 19 We believe that the following policy amendments, which in the FCA's opinion differ from the draft rules in a significant way, result in costs of zero or minimal significance, so we do not provide further analysis. Table A3.1 summarises these changes and explains why we believe costs are of minimal significance.

Table A3.1 – Summary of changes where costs are of minimal significance

Chapter	Amendment	Justification of minimal significance of any increase in costs
Chapter 2	Threshold conditions – there is no change to the guidance on which we consulted in CP13/10.	No change.
	Approved persons – there is no change to the proposals on which we consulted in CP13/10.	No change.

Chapter	Amendment	Justification of minimal significance of any increase in costs
	<p>Appointed representatives – we are extending the multi-principal option to appointed representative third party debt collectors.</p> <p>Self-employed agents – we are extending the scope of this option so that it is available to persons carrying out any credit activities that meets our requirements.</p> <p>Exempt professional firms – we are currently working with the DPBs to establish suitable arrangements from 1 April 2014.</p>	<p>This is an extension of the lower-cost appointed representative option. So no further CBA is required.</p> <p>This is an extension of the lower-cost option. So no further CBA is required.</p> <p>We do not believe further CBA will be required when these arrangements have been finalised.</p>
Chapter 3	Supervision and regulatory reporting – we have removed two data elements (car ownership and household income) from the PSD requirements.	This is a reduction in firm requirements and the change therefore reduces firm costs.
Chapter 4	<p>Conduct of business – these rules essentially carry across CCA provisions and existing OFT guidance.</p> <p>Creditworthiness assessment – we have added a rule to the creditworthiness assessments in CONC 5.5.5R (P2P) and 6.2.3R (post-contract) to require the firm to consider sufficient information to make a reasonable assessment.</p> <p>The financial promotions regime, where we are clarifying the APR triggers.</p> <p>CONC 3 application – we have clarified the drafting of the application provisions in certain parts of CONC 3 (financial promotions).</p> <p>Significant repayments – we have clarified our position on significant repayments.</p>	<p>As this mainly involves carrying across existing provisions in the same or substantially similar form, it falls within the CBA carve-out as explained in CP 13/10 (paragraph 3 of Annex 5).</p> <p>This rule was reflected in 5.3.2R in CP13/10, but was not included for the P2P and post-contract assessment. This is derived from the OFT's Irresponsible Lending Guidance and therefore falls within the CBA carve-out.</p> <p>This is a clarification of our intention which was reflected in the original CBA.</p> <p>This merely makes clearer where the provisions apply and does not alter the burden of the provisions.</p> <p>This has some impact on firms, see below.</p>
Chapter 5	<p>Refinancing a loan – we have amended these rules to clarify that this does not include a request by a consumer to change their regular payment date.</p> <p>Information sheets – we have updated the content of the information sheets and clarified that a firm can signpost or send it, and bring it to the consumer's attention where it is reasonably practicable to do so.</p>	<p>Zero cost to firms.</p> <p>Requiring a firm to draw an information sheet to the attention of the customer, before the refinancing, only where it is reasonably practicable to do so does not impose burdens on firms over and above those accounted for in the original CBA.</p>

Chapter	Amendment	Justification of minimal significance of any increase in costs
	<p>Continuous Payment Authorities (CPAs) – in response to feedback, we have amended the CPA rules to allow consumers to ‘reset’ the CPA limit if they roll over or refinance the agreement (subject to firms, following specified procedures).</p> <p>We recognise that a limit of two CPA attempts per loan which was the original intention will have a disproportionate impact on instalment loans and so we have amended this.</p> <p>Part-payments – the rules on part-payment were not intended to ban one-off payments by consumers or repayment plans where the consumer makes one or more smaller payments and subsequently consents to the use of the CPA. We have clarified this.</p>	<p>This will enable firms to make greater use of CPA with the consumer’s consent, and so will reduce the impact on firms, and as such no further CBA is required.</p> <p>Clarifications of the part-payment rules will not create an additional cost for firms, and so no further CBA is required.</p>
Chapter 6	<p>PERG guidance – we have amended our guidance on the regulatory perimeter in response to CP responses and to reflect the changes made by the Government to the RAO.</p> <p>Information sheets for P2P – we have decided not to require firms to provide a default information sheet.</p>	<p>The scope of the regulatory perimeter is set out in legislation. PERG provides only guidance on that legislation to persons who wish to find out whether they need to be authorised and on the regulated activities their permission needs to include. The amendments to the PERG guidance do not, therefore, have cost implications for firms and no CBA is required.</p> <p>We are clarifying the precise wording and timing for providing information sheets; however, the fundamental costs and benefits of the proposal remain the same as in CP13/10.</p>
Chapter 7	<p>Prudential requirements – the volume-based measure has been adjusted from a flat rate to a tiered approach.</p>	<p>This is a reduction of cost for firms and therefore does not require the FCA to re-estimate its impact, as detailed in FSMA s.138L(3). However, we believe the impact on firms will be significant and therefore we estimate the impact below.</p>
Chapter 8	<p>Debt management firms – we are clarifying the rule requiring large debt management firms to consider the risks of holding all client money with one bank.</p> <p>P2P information sheets – the wording of the information sheets required where a customer is in arrears under CONC 7.17 or 7.18 has been revised.</p>	<p>This will have minimal impact so no CBA is required.</p> <p>We are clarifying the precise wording; however the fundamental costs and benefits of the proposal remain the same as in CP13/10.</p>

Chapter	Amendment	Justification of minimal significance of any increase in costs
	<p>CASS rules – we are amending our rules to include a requirement that firms keep client bank account acknowledgement letters for five years after the relevant client bank account is closed.</p> <p>CASS rules – we are amending our rules around how a firm calculates its client money requirement to ensure the firm incorporates into its calculation all client money the firm is required to segregate in a client bank account.</p> <p>CASS rules – we are amending our definition of client bank account to ensure all firms include the word ‘client’ (or an appropriate abbreviation thereof) in the title of the account.</p> <p>CASS rules – we are amending our requirements around secondary pooling events, so that if a firm uses its own money to pay all of its clients the amount of money that would have been available in client bank accounts but for the insolvency of the approved bank, the ordinary secondary pooling rules do not apply.</p>	<p>The original CBA covered the costs of certain record keeping requirements including acknowledgement letters, record keeping and the CASS resolution pack; see section 3.11 of the EE report. Firms are required to keep acknowledgement letters for open accounts and we do not believe that requiring these letters to be kept for five years after an account has closed poses any significant additional costs.</p> <p>The original CBA covered the costs of undertaking internal client money reconciliations; see section 3.11 of the EE report. The amendments to the client money requirement calculation are intended to ensure a firm captures any other receipts or holdings of client money which would not otherwise form part of the firm’s internal client money reconciliation. We do not believe these amendments will result in any additional costs over and above those captured in the original CBA.</p> <p>The original CBA covered the costs of setting up and operating client bank accounts. Firms are required to ensure the title of client bank accounts include an appropriate description to distinguish the money in the account from the firm’s own money. We do not believe that requiring all firms to include the word ‘client’, or an appropriate abbreviation thereof, in the account title will pose any significant additional costs.</p> <p>We provide rules on how client money is to be pooled and distributed following the insolvency of an approved bank with which client money has been deposited (secondary pooling event). We now intend to give each firm the option to avoid the occurrence of a secondary pooling event by paying its own money to clients in an amount that covers what would have been available in client bank accounts but for the insolvency of the relevant bank. We do not believe this will result in any additional costs to firms.</p>
Chapter 9	Second charge loans – there are no significant changes in this chapter to the requirements already consulted on in CP13/10.	No changes.

Chapter	Amendment	Justification of minimal significance of any increase in costs
Chapter 10	<p>Complaints reporting – we have only made some minor changes to the complaints reporting form in respect of fields to be completed by firms.</p> <p>The requirements to report and, where appropriate, publish consumer credit complaints will not apply until firms have full authorisation or variation of permission, or until 1 October 2014 if later.</p>	Minor changes which have minimal significance.
Chapter 11	<p>Enforcing our rules and tackling financial crime – there are no changes in this chapter to the requirements already consulted on in CP13/10.</p>	No changes.
Chapter 13	<p>Quarterly CP – we are modifying one of the requirements consulted on in the QCP, but this reduces the burden on firms.</p> <p>Extend scope of ‘agents’ option to all credit activities.</p> <p>There will also be transitional arrangements further delaying the point at which credit unions will have to start using the new complaints reporting form.</p>	We are marginally reducing the impact on firms and as such this does not need a further CBA. By extending the scope of the ‘agents’ option to all credit activities, this increases the scope of this lower-cost option.

Update to our CBA

20 Certain policy amendments will give rise to material costs and we have re-estimated our CBA on this basis. We summarise each of these changes in turn, highlighting relevant chapters and explaining how the analysis has been updated. We also provide an estimate of how the CBA has changed as a result of the policy amendments. There are three main areas:

- proposed change to authorisation fee structures
- change in the metric used to calculate prudential requirements for debt, management firms
- additional debt management guidance.

Change to authorisation fee structures

21 In CP13/10 we consulted on the application fee structure based on the complexity of firms’ business models. In response to early feedback and from listening to the industry at roadshows, we decided to amend the proposed structure to reflect the size of the firm. This change is both in response to fears that the costs to small firms are disproportionate and that this could lead to barriers to entry that discourage competition. In December 2013, we therefore proposed changes to the fee structure which can be found in CP13/14.⁵⁷ In particular, Table 2.1a in that document is reprinted below:

Table A3.2: revised application fee structure according to consumer credit income

	Up to £50k	£50k–£100k	£100k–£250k	£250k–£1m	Over £1m
Limited permission (no change)	£100	£500	£500	£500	£500
Straightforward	£600	£750	£1,000	£1,500	£5,000

⁵⁷ <http://www.fca.org.uk/static/documents/consultation-papers/cp13-14-supplement-on-application-fees-revised-proposals.pdf>

Moderately complex	£800	£1,000	£1,500	£5,000	£10,000
Complex	£1,000	£1,250	£2,000	£7,000	£15,000

- 22** This means that, for example, under the revised proposals a firm in the 'straightforward' category, with over £1m in annual revenues, would pay an authorisation fee of £5,000. This would be more than a firm with less than £250,000 in turnover categorised as 'complex', which would pay £1,000 to £2,000. The maximum application fee payable within a given category has increased. So those firms paying more than before would be those with in excess of £1m in consumer credit turnover. Credit unions and community benefit societies will pay a concessionary rate of £200.
- 23** Where a firm is seeking a variation of permission (VoP), because it is already FCA-authorized, these fee levels are halved (unless the firm already has a 'straightforward' consumer credit permission in which case the VoP fee is £250). The fees for limited permission remain unchanged and there are no fees for VoPs for these.
- 24** Although we are not required to undertake a CBA for fee structures, we set out the likely cost implications of these changes for firms to illustrate the impact they might have on small firms. Our previous CBA estimated that about 90 per cent of pre-transfer firms had consumer credit turnover below £250,000 and that many of these would be eligible for limited permission. We believe this is still the case, and these firms would therefore not be affected by the revised proposal. However, many smaller firms in the home credit, non-bank lending (including high-street lenders such as pawnbrokers), debt management and debt collection firms will benefit from the new fee structure. Some of this saving to smaller firms will be passed on as higher costs to firms with consumer credit income over £1m per annum.
- 25** We re-estimate that the cost of fees for the industry overall will fall from £25.4m to £46.2m to £21.3m to £37.5m, saving the industry between £4.1m and £8.7m in initial up-front costs.
- 26** It is worth noting that we do not in practice recover the full cost of assessment from the applicants themselves through the authorisation fee. The costs are shared with existing firms through their periodic fees. This is partly to avoid the risk of application fees acting as a barrier to market entry, and partly because all firms benefit from operating in a market that has enhanced integrity because firms must meet our threshold conditions before they can enter it.
- 27** As noted in the CP13/14 supplementary consultation, we are mindful of the need to set fees at a level that should not unduly prevent firms from entering the market and we have adjusted the fee structure to encourage small firms to enter the market and increase the range of choices available to consumers and promote opportunities for entrepreneurial start-ups to challenge existing market participants.

Change in metric used to calculate prudential requirements

- 28** The requirements for prudential capital affect debt management firms. In CP13/10 we proposed that capital equal to a flat 0.25% of debts under management would be required (subject to a minimum of £5,000). The revised proposal moves away from a flat percentage to:
- 0.25% of debts under management up to £5m
 - 0.15% of debts under management between £5m to £100m
 - 0.05% of debts under management in excess of £100m
 - The minimum prudential capital remains the same

- 29** This means that firms with debts under management over £5m will face a smaller requirement. For example, a firm with debts under management of £250m would see its minimum prudential requirement drop from £625,000 under the old proposal to £230,000 under the new one.
- 30** As well as updating our CBA to reflect this new metric, we also asked EE to update its analysis to reflect new financial reporting data that we had received since CP13/10 was published. This has enabled us to calculate the effect of our prudential proposals on the industry.
- 31** When looking across the entire industry, the new capital requirements are estimated at £5.5m to £7.8m (compared with £7m to £10.1m under the previous flat percentage policy). This reduction (£1.5m to £2.3m) benefits medium and larger firms who gain from the lower rates applied to debts under management over £5m. We assume that this does not alter the cost of capital as estimated in EE's original report, and that firms may be able to raise this capital through retained profits (i.e. lower dividends) in advance of the prudential requirement coming into force. However, even under significantly higher cost of capital assumptions, we find the ongoing cost to firms would be small when compared to revenue and would not change our judgment on the need for prudential requirements in this sector. The main free-to-client charitable firms affected by the prudential rules will benefit from the revised proposals.

Debt management fees guidance

- 32** In CP13/10, we consulted on a rule that required debt management firms to ensure that the obligations placed on their customers in debt management plans, in relation to the amount and timing of their payment of the firms' fees and charges, does not undermine their ability to make 'significant repayments' to their creditors from the first month of the plan. In response to feedback we have clarified our expectations about what would constitute a 'significant repayment' for these purposes.
- 33** The original CBA did not quantify the impact of the 'significant repayment' guidance in terms of the financial impact on firms that may result from them having to meet this repayment requirement. Taken at face value, where firms comply with the guidance, they will need to raise capital to meet any shortfall in cash flow as they transition to a higher percentage repayment. This requirement could cost firms £0.1m. This would be felt most by those providers not currently repaying a significant proportion of repayment plans to creditors. Firms having to meet this requirement is also a direct benefit to consumers in that the higher repayments being made to their creditors from the beginning of their repayment plans should result in their debts being repaid earlier.

Annex 4

Feedback (and our response) on Q28: Do you agree with our assessment of the impact of our proposals on the protected groups? Are there any others we should consider?

Impact on protected groups

- 1 We are required, under the Equality Act 2010, to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (such as age, disability, gender, race, pregnancy and maternity, religion and belief, sexual orientation and gender reassignment).
- 2 An equality impact assessment was set out in Annex 6 to CP13/10. It concluded that, overall, consumers – including the protected groups who are disproportionately vulnerable to consumer detriment – will benefit from our proposals. In particular, they will benefit from being able to borrow more affordably, and choose loans that better meet their needs and preferences, and better treatment when encountering payment difficulties.

Q28: Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?

- 3 Most respondents agreed with our assessment of the impact of our proposals on protected groups. There were, however, concerns raised around the limited availability of data in the consumer credit market, which in turn limited the impact analysis that could be carried out. There was also a concern that some protected groups might be disproportionately affected by firms leaving the market, in particular in relation to point-of-sale credit.
- 4 Some respondents highlighted specific areas which would merit further consideration during a post-implementation review. Others emphasised the importance of effective enforcement of the new rules.

Our response

The effect of firms leaving the market is considered further in Annex 3 as part of the cost benefit analysis, and this takes account of views expressed in response to Q28. We have also had regard to these in finalising our policies.

We intend to supervise proactively in areas of the credit market where there is the greatest risk of detriment to vulnerable consumers. Reporting requirements when firms are authorised will enhance our evidence base, but we can request

data on an ad hoc basis before then, if it is appropriate. We can also undertake thematic reviews or market studies, or consumer research.

We intend to undertake a post-implementation review and will look at the impact on the protected groups, as well as on consumers generally.

Annex 5

Feedback / responses on the detailed conduct standards draft text

- 1 This Annex summarises responses to Q7 of CP13/10, plus relevant aspects of Q8, Q19 and Q20. The references in the first column to ‘CONC provision’ relate to the provisions in the draft sourcebook consulted on in CP13/10. Where these have changed in the final version, we have indicated the new reference in italics in the third column.

Table A5.1 – the relevant CONC provisions, and our response to feedback on our consultation

CONC provision	Feedback from respondents	Our response
1.2.2R	This goes beyond OFT guidance, which refers to lenders taking appropriate responsibility for acts/omissions of agents or business associates. A firm should not be expected to assume liability for ensuring compliance of intermediaries who are not appointed representatives.	We have clarified that firms must ensure that their employees and agents comply with CONC, and must take reasonable steps to ensure that other persons acting on their behalf comply with CONC.
1.3.1G	There are multiple definitions of ‘financial difficulties’ which could generate confusion. A single definition should be adopted, with cross-references.	We do not consider this to be necessary. We have, however, amended to ensure consistency of reference.
1.3.1G(2)	This implies a need to reconfirm that a credit reference agency (CRA) file entry is accurate before it is accepted as evidence of financial difficulty.	We have amended to refer to adverse accurate entries on a credit file which are not in dispute.
1.3.1G(4)	This may not be an indicator of financial difficulties – the customer may simply not have met the firm’s underwriting criteria. Also, firms cannot be expected to know whether a customer has been declined for credit, as although application searches are visible via a CRA, the result of the application is not. The provision could have unintended consequences, by deterring consumers from applying for ‘prime’ products and restricting credit availability.	We have deleted this example.

CONC provision	Feedback from respondents	Our response
1.3.1G(5)	This could be interpreted as applying to customers taking out a new credit card with a balance transfer.	We have amended to refer to a customer having to borrow further to repay existing debts. <i>Now 1.3.1G(4).</i>
2.2.2G(2)	Paragraph 2.3 of the OFT's Irresponsible Lending Guidance (ILG) refers to 'inappropriate coercion'. Action may be necessary to tackle a customer who 'won't pay'.	We have not amended. 'Unfair' is in line with other aspects of CONC and with Principle 6.
2.2.4G	More of the OFT's Misleading Names Guidance should be included. In particular, names of firms providing high-risk products may cause consumers to be misled as to the risk nature of the product.	We have modified the list of matters about which a firm's name may mislead, and these include the identity or nature of the firm, the nature of the products or services supplied, or their cost.
2.3.3R	It is unclear what is meant by 'experiencing difficulty' and whether this corresponds to 'financial difficulties'.	We have downgraded this to guidance, with cross-reference to 6.7.2R which refers to taking appropriate action where there are signs of actual or possible repayment difficulties. <i>Now 2.3.3G.</i>
2.4.3G	This goes beyond ILG and the Lending Code, and would not be practicable to implement within the timescales. ILG 3.13 encourages the use of quotation searches but does not require these or stipulate when they may be appropriate or what information should be provided. An obligation to provide quotation searches would take time and resource to implement (at least 12 months), and would have ramifications for the way risk-based products are developed, marketed and sold. The FCA should work with the industry to consider how best to achieve the desired outcomes over a feasible timeframe.	We have amended to state that (i) a firm undertaking a credit reference search should not leave evidence of an application on a credit file where a customer is not yet ready to apply and (ii) where practicable, firms should facilitate customers shopping around for credit by offering a 'quotation search' facility. Quotation searches are a way of treating customers fairly, in particular in relation to products involving risk-pricing or where product details are not readily available, and we would encourage their greater use. We will monitor developments in this area.
2.5.8R(7)	There are references throughout CONC to different types of telephone call charge (e.g. premium rate). To avoid uncertainty, these should be clearly defined.	We do not agree. Such terms are generally understood, and it might be difficult to future-proof definitions. We expect firms to comply with the principles in our rules.
2.5.8R(15)	The reference to 'ought reasonably to know' is a higher test than in the OFT's Credit Brokers and Intermediaries Guidance (CBG), given the subjectivity of the concept.	We have not amended. We consider the formulation is clearer than reference to something being 'clearly not in the best interests of the borrower'. <i>Now 2.5.8R(16).</i>
2.5.8R(18)	Brokers should be precluded from taking payment before the firm has entered into a contract with the customer (cf 8.7.5R(3) for debt management).	We have not amended, as there is no equivalent in OFT guidance. However, it should be read in conjunction with 4.5.2R which transposes s160A CCA. <i>Now 2.5.8R(20).</i>

CONC provision	Feedback from respondents	Our response
2.5.9G(7)	This should copy out OFT guidance, which refers to 'sensitive' personal data and 'express' consent.	We have amended to refer to passing sensitive personal data in specified and limited circumstances.
2.6.2R	The signposting needs to be prominent, and the requirement should be limited to debt management firms (as opposed to any profit-seeking firm that provides debt advice).	We have amended to limit the application to debt management firms (in line with the Debt Management Protocol from which this derives) and to incorporate a prominence requirement. <i>Now 8.2.4R.</i>
2.10	There are no rules in this section. Given the importance of the area, the FCA should stipulate clear requirements.	We do not agree, as the provisions on mental capacity are more suited to guidance than rules, given the nature of the issues. We will, however, keep this under review, and if we find evidence that firms are not having sufficient regard to the guidance, we may consider consulting on upgrading aspects to rules.
2.10	This is headed 'Dealing with particularly vulnerable customers' but in fact is limited to guidance on mental capacity. The FCA should consider broader guidance following a thematic review of the causes and consequences of consumer vulnerability.	We have amended the heading to 'Mental capacity guidance'. We may consider further guidance in due course in light of our ongoing work on vulnerability across regulated financial services generally.
2.10.2G(2)	The OFT's Mental Capacity Guidance (MCG) provides much more detail, reducing scope for misinterpretation. In particular, firms should not use a blanket policy to assess mental capacity.	We have added guidance that, in making a decision within 2.10.1G, a firm should consider the customer's individual circumstances (cf MCG 2.4). <i>Now 2.10.2G(4).</i>
2.10.5G	CONC applies if a firm 'reasonably suspects' whereas MCG refers to having 'a basis for understanding or suspecting', which is a more objective test.	We do not agree. The reference to reasonable suspicion relates to what a reasonable person thinks reasonable.
2.10.7G	The current wording is unduly prescriptive and should more closely reflect MCG. It is important that consumers are not discriminated against just because they have a diagnosed mental health illness.	We have amended to make clear that having a condition of a type in 2.10.6G does not necessarily mean that the customer does not have the mental capacity to make an informed borrowing decision (cf MCG 2.10).
2.10.9G	This does not accurately reflect case law governing capacity to contract. A lender knowingly entering into an agreement with a person with mental capacity limitations, or where this should have been reasonably apparent from the circumstances, will have a contract that is voidable at the instance of the borrower. Firms should not be required to enter into such contracts.	We have clarified that it would not be inappropriate to decline to enter into a credit agreement where the firm reasonably believes the agreement is void, or would be voidable, on the basis of mental capacity limitations.

CONC provision	Feedback from respondents	Our response
2.10.14G	The prescriptive nature of the pre-contract credit information form (SECCI) limits firms' ability to present information in a user-friendly manner.	We have added that this is subject to compliance with relevant statutory requirements.
2.10.19G	It is potentially discriminatory to require a more stringent affordability assessment in the case of customers who may lack mental capacity, and this does not address the point that the customer may not understand the terms of the credit offer. In contrast, MCG 4.33 refers to applying a particularly high level of scrutiny to the borrower's application for credit.	We have clarified that (i) a firm should balance the risk of a customer taking on unsustainable borrowing against inappropriately or unnecessarily denying credit to the customer and (ii) where a firm understands or reasonably suspects that a customer has or may have a mental capacity limitation, it should undertake an appropriate and effective affordability assessment, and in doing so it would be appropriate not to place over-reliance on information provided by the customer.
3.1.6R(1)	The wording in the Consumer Credit (Advertisements) Regulations (CCARs) is sufficient and should be carried across. As a minimum, the words 'whether expressly or by implication' should be added, to clarify the scope.	We have amended to refer to a financial promotion or communication which, expressly or by implication, indicates clearly that it is solely promoting credit or hire agreements for business purposes.
3.1.6R(2)	Clarity is needed as to whether the exemption extends to intermediary firms.	We have not amended, as it is clear that CONC 3 applies (unless otherwise stated) in relation to credit broking as well as consumer credit lending.
3.3.3R	It is unclear how this relates to 3.5.11R and whether it precludes pre-approval or guaranteed cards. OFT guidance refers to suggesting or implying that credit is available regardless of income or other financial circumstances where this is not the case.	We have not amended. ILG 5.2 makes it clear that advertising should not suggest that credit is available regardless of the borrower's financial circumstances (i.e. irrespective of a creditworthiness check), and this applies generally. We have, however, added guidance at 3.3.4G(2) making clear that if credit is described as 'pre-approved' it should be free of any conditions regarding the borrower's credit status, i.e. the lender has already carried out the required assessment.
3.3.5G(1)	This imposes new obligations on firms, by requiring that every time a lender communicates the benefits of a product to a customer, the risks should also be outlined. It is unclear whether these must be more prominent than the benefits. It goes further than CCD which stipulates that consumers should receive an adequate explanation of the product features and risks.	We do not agree. This is guidance on the 'clear, fair and not misleading' rule. If benefits are emphasised, there should be a fair and prominent indication of relevant risks, to ensure that the advertising is 'balanced'. It does not require disclosure of all risks, or for these to be of equal or greater prominence. The CCD advertising provisions are stated to be without prejudice to the Unfair Commercial Practices Directive.

CONC provision	Feedback from respondents	Our response
3.5.1R(2)	This appears to apply CCD rules to loans, which are otherwise exempt.	We have amended so that, in relation to promotions about lending, the provisions apply only to regulated credit agreements. Firms should, however, take care when promoting exempt agreements. For example, the exemption for loans to high net worth (HNW) borrowers is subject to the customer satisfying the criteria relating to income or assets, and the customer may in the event elect to enter into a regulated agreement.
3.5.2R	s45 CCA prohibits advertising where the goods/services are not available for cash, but does not require the cash price to be stated in the advertisement.	We have amended the provision (and its sub-heading) to bring it closer in line with s45.
3.5.6G(2)	This goes beyond the CCARs, which allow for disclosure of either an effective annual rate (EAR) or a simple rate, and this is also permissible under CCD.	We have amended to make it clear that firms should generally use the effective annual rate, calculated using the same assumptions as for APR, but if not they should clearly explain this, so the customer is clear whether and to what extent the interest rate used is comparable with rates shown by other lenders.
3.5.7R(1)	The proposal at (b) goes beyond CCD and constitutes gold-plating. Any description of incentives should be limited to guidance, or confined to HCSTC. Speed/efficiency can be a feature of a product, and should not be treated in the same way as e.g. a free gift. Firms should be free to promote such benefits of the service offered.	We do not agree that this contravenes CCD, given the carve-out in A4(1). We are merely seeking to clarify the scope of the current APR triggers. We have, however, added that whether or not a reference to speed or ease constitutes an 'incentive' would depend on the circumstances, including whether it is likely to persuade or influence a customer to take the steps in question or is merely a factual statement about the product/service.
3.9.3R(6)	Firms carrying on debt adjusting or debt counselling should only be required to state in a financial promotion that they are commercial when this is the case. Also, they should be required to state that their services are provided for payment by the customer regardless of whether or not they are profit-seeking.	We have separated this out, with (6) requiring a statement that the firm's service is profit-seeking (as opposed to commercial) where this is the case, and (7) a statement that the firm's service is offered in return for payment where this is the case. This could include not-for-profit debt advice bodies.
3.9.3R(7)	The requirement to signpost the availability of impartial sources of assistance by not-for-profit debt advice bodies should not apply to such bodies.	We have clarified that this does not apply to not-for-profit debt advice bodies. <i>Now 3.9.3R(8).</i>

CONC provision	Feedback from respondents	Our response
3.11.2R	This appears to be very broad, with the definition of 'interactive dialogue' being extremely wide. It appears to preclude a firm from promoting its services by phone (by way of an agreed script) or using another firm to do so, in relation to new customers.	We have added guidance making it clear that 3.11.2R does not prevent the communication by a firm (with a permission) of a financial promotion, but does prevent the firm from approving for communication a relevant promotion by an unauthorised person. <i>Now 3.11.3G.</i>
4.1.2R	This does not relate to pre-contractual disclosure, and applies principally during the course of an agreement.	We have moved this to 2.3.5R (general practices).
4.3.2R(1)	The agreements are excluded from CCD and s55A CCA so should not be subject to CONC requirements. In any event, it is confusing to refer to taking rules into account as guidance, and it is unclear what this means in practice and whether failure to comply could lead to enforcement action. It appears to apply the full force of the adequate explanations requirements, as an 'optional measure', but in a way that leaves firms little option but to comply. This is inappropriate and amounts to gold-plating of CCD.	We do not agree with the analysis. ILG 3.1 makes it clear that OFT expects all lenders to consider the extent to which the relevant principles may be applied to all aspects of their regulated credit business. We are seeking to reflect that in CONC, as guidance in relation to the Principles for Businesses. We have, however, amended the provisions to clarify their application, with changes to 4.3.2R(2) as below. <i>Now 4.2.1R.</i>
4.3.2R(2)	As above. In addition, the Department for Business Innovation & Skills (BIS) decided, as part of CCD transposition, not to extend s55A CCA to loans over £60,260 or secured on land, and the same arguments apply today. Overdrafts are expressly excluded from A5(6) CCD, and recital 11 prohibits Member States (MS) from over-riding this exclusion, so the FCA has no locus to require explanations for overdrafts.	We have downgraded this to guidance, stating that firms should consider whether it is necessary or appropriate to provide explanations of the matters in 4.2.5R(2) in relation to the excluded agreements. In particular, they should consider highlighting key risks to the customer, including the principal consequences of missing payments or under-paying. We may review in future whether the provisions should be applied as rules to all regulated credit agreements. <i>Now 4.2.2G.</i>
4.3.4R	The CCA Disclosure Regulations permit information to be representative rather than personalised, and allow a lender not to disclose information according to the customer's preferences if in principle the firm is not willing to lend according to the customer's terms.	We have downgraded this to guidance, and amended to make clear that pre-contractual information and explanations should take into account any preferences expressed, or information provided, by the customer where the firm would in principle agree to offer credit on such terms. <i>Now 4.2.4G.</i>

CONC provision	Feedback from respondents	Our response
4.3.5R(2)	In (d)(ii), it is not practicable to require lenders to provide an approximate level of charges or interest in the event of default, and this may not be useful to consumers anyway as it will be dependent on a number of factors. It also goes beyond CCD and is not a requirement of s55A CCA.	We have amended the preamble to (d) to make clear that this will depend on the type and amount of credit and the customer's circumstances. In addition, we have amended (d)(ii) to delete reference to the approximate level of charges, as we accept it is sufficient for firms to signpost to the SECCI for details. <i>Now 4.2.5R(2).</i>
4.3.5R(2)	In (d)(v), the reference to 'implications of insolvency' is too broad and uncertain, and would be impractical to implement given the range of possible scenarios. Unlike ILG, it removes firms' discretion to decide what are the 'principal consequences' in each case. These should be limited to the main potential outcomes.	We have deleted this provision.
4.3.6R	It is inappropriate to require firms to ensure that the customer can make a reasonable assessment of affordability and risks, and this amounts to gold-plating of CCD, which places the onus on the consumer to take an informed decision based on sufficient information. Any additions or clarification of expectations should be expressed as guidance not rules.	We have downgraded this to guidance on 4.2.5R. <i>Now 4.2.6G.</i>
4.3.7R	This changes the context of ILG 3.4, and removes lender discretion by requiring specific considerations in all circumstances. Making it a rule creates ambiguity. The current flexibility of ILG should be retained, by making it guidance on how to comply with 4.3.5R.	We have downgraded this to guidance, making it clear that a firm should consider, to the extent appropriate, relevant factors including those listed. We have added at (2) that the risk to the customer is likely to be greater, the higher the total cost of the credit relative to the customer's financial situation. <i>Now 4.2.7G.</i>
4.3.15R	This is an example of where an OFT view – which is non-binding and advises how compliance with CCA might be achieved – is being re-interpreted as a prescriptive requirement with an assumption that all lenders should already subscribe to the OFT view. By making this binding rules, costs to firms could increase. It could also create information overload for consumers. As it goes beyond s55A, it should be merely guidance.	We do not agree. ILG 3.13 makes it clear that, in the OFT's view, the features listed should be included, where applicable, in an explanation to a potential borrower. This is because they are features of the product which may have a significant adverse impact in a way the borrower is unlikely to foresee, and so must be disclosed under s55A(2)(c). It is also relevant that the BIS summary of responses to the consultation on CCD implementation noted that "OFT guidance will provide the necessary detail on (a) and (c) [of s55A(2)] where these explanations are applicable". <i>Now 4.2.15R.</i>

CONC provision	Feedback from respondents	Our response
4.3.15R(1)	On (a), this has changed meaning from the OFT guidance, which merely suggests that lenders should explain that different rates or charges may apply (rather than requiring disclosure of the actual rates/charges).	We have amended to require an explanation, where applicable, that different rates of interest and/or different charges apply to different elements of the credit provided (for example, the higher cost of withdrawing cash). <i>Now 4.2.15R(1).</i>
4.3.15R(1)	On (c), this is not required by the SECCI and would be impractical and of limited value to consumers.	We have amended to require an explanation, where applicable, that interest rates may be increased. <i>Now 4.2.15R(1).</i>
4.3.16G	Firms may not be confident to adopt such an approach where it may not be clear that the customer is receiving an appropriate explanation from a friend or relative. There should be no implication that the firm would be obliged to lend in such cases, and there may be other mechanisms to enhance a consumer's understanding.	We have amended to state that the firm may need to consider alternative methods of providing information for the customer to make an informed decision, such as providing the information to a person with such understanding who can assist the customer, for example a friend or relative. <i>Now 4.2.16G.</i>
4.3.19G	This should be designated as a rule, as consumers are particularly likely to be sold unsuitable or unaffordable agreements or surprised by features of an agreement where these are marketed by distance or electronic means.	We do not agree, as there may be other ways of satisfying 4.2.5R. We have, however, amended to make clear that merely providing a link is unlikely to satisfy 4.2.5R where the agreement can be concluded without accessing the link. <i>Now 4.2.19G.</i>
4.3.20G	Lenders should be able to rely on a script, provided that they do not rely on it exclusively. Offering to answer any further questions plus the use of a script to convey the mandatory information should be sufficient.	We have amended to refer to relying solely on a written script, but adding that it should be made clear to the customer that he they ask questions or request further information or explanation. <i>Now 4.2.20G.</i>
4.6.2G	This goes beyond ILG, and will take time to implement where firms already have fixed-term pricing contractual arrangements in place. There should be consultation with industry and an adequate lead-in time. In addition, references to 'volume' and 'profitability' are unclear.	We do not agree. ILG 5.5 makes clear that differential commission rates or volume over-riders should be offered only where they are justified in terms of the relative work involved. The current drafting is sufficiently clear in our view. <i>Now 4.5.2G.</i>

CONC provision	Feedback from respondents	Our response
5.2.1R(2)	This goes beyond s55B CCA. CONC rules should be limited to the CCD concept of creditworthiness, and adding affordability (from ILG) amounts to gold-plating. The affordability provisions should remain as guidance. The UK is prevented from going beyond A8 CCD – the OFT produced ‘best practice’ guidance but this was merely the OFT’s view and it is not legally possible to make this binding. The proposed rule would amount to a violation of A22 CCD (harmonisation). Also, combining creditworthiness and affordability ‘muddies the waters’, made worse by the omission of various ILG provisions which help put affordability in context.	We do not agree. The Commission has stated that MS have a margin of manoeuvre as to how to ensure the creditworthiness check and may adapt their requirements in order to promote responsible lending, and recital 26 CCD notes that MS authorities can give ‘appropriate instructions’ to creditors. In transposing CCD, BIS initially proposed a series of requirements related to affordability, but decided in the event that a requirement on the face of legislation would be inflexible and not easily amended or updated, and so it was better to “deal with the more complex issues of irresponsible lending and affordability in OFT guidance” which could be kept up to date in the light of developing practice. We consider that our proposed rules are both appropriate and consistent with CCD.
5.2.1R(2)	It is unclear whether this creates an entirely new standard of compliance for lenders when compared to the OFT regime. In particular, whether it is mandatory to request income and expenditure details and obtain supporting evidence, and whether firms could be held culpable if the borrower provided false information. A consumer body argued that there should be a positive obligation on firms to actively seek information necessary to make an assessment, and to make use of information of which they have constructive knowledge.	We have added that firms must consider sufficient information to enable them to make a reasonable assessment of creditworthiness or affordability. In addition, we have added guidance that where a firm requests information from a customer, and this is false, this does not contravene 5.2.2R provided that the firm has no reason to know this is the case. <i>Now 5.2.2R(3) and 5.3.1G(11).</i>
5.2.1R(2)	ILG 4.2 should be reflected in the rulebook. This underlies the role data sharing plays in facilitating the assessment of affordability and responsible lending.	We have added guidance making it clear that – subject to relevant legal constraints – the FCA encourages the sharing between lenders of accurate data about the performance of an account and the settlement of debts, as the process of assessing affordability is assisted by lenders registering such data with CRAs in a timely manner. <i>Now 5.3.1G(12).</i>
5.2.2R(1)	This goes beyond ILG, which merely states that the guidance as a whole applies to regulated agreements. The reference to overdrafts amounts to gold-plating in breach of CCD harmonisation. It should be categorised as guidance not a rule.	We do not agree. As above, we consider that the rules are both appropriate and consistent with CCD (and A8 applies to overdraft facilities repayable on demand or within three months). We have, however, clarified that the rule does not apply in relation to overrunning (ie unauthorised overdrafts).

CONC provision	Feedback from respondents	Our response
5.2.2R(2)	This should be guidance, not a rule. It derives from ILG, which makes it clear that a proportionate assessment may include some or all of the factors listed. The FCA should work with the industry to create additional regulatory guidance, using examples or case studies, to illustrate what proportionate credit assessments may look like for a selection of scenarios.	We have downgraded this to guidance, stating that the extent and scope of an assessment of creditworthiness or affordability should be dependent on and proportionate to relevant factors, which may include one or more of those listed. We may consider further guidance in future if appropriate. <i>Now 5.2.3(G).</i>
5.2.3G(2)	This omits key elements of ILG 4.12 and 4.15, which deal with the process of assessing affordability. The overall effect could be to remove flexibility.	We have added guidance that firms should consider the types and sources of information to use in assessing creditworthiness or affordability, which may, depending on the circumstances, include some or all of the following: record of previous dealings, evidence of income or expenditure, a credit score, a CRA report and information provided by the customer. <i>Now 5.2.4G(3).</i>
5.3.1G(2)	There should be an exemption for lending to high net worth (HNW) borrowers, some of whom may be very wealthy but 'asset rich cash poor'.	We do not agree. There is a CCA exemption for HNW lending where the customer satisfies certain conditions and agrees to forgo CCA rights and protections. Where this exemption does not apply, the affordability assessment should apply in the usual way.
5.3.1G(2)	There should be explicit provisions for lenders who advance credit on the basis that the consumer provides a guarantor.	We have not amended, as there is no equivalent in OFT guidance. However, we consider that it is implicit that the assessment should also cover any guarantor.
5.3.1G(3)	This omits ILG 4.9, which refers to situations where credit may not be immediately sustainable, and does not adequately reflect ILG 4.13 and 4.14 which refer to anticipated changes in income or expenditure.	We have clarified that if a firm takes income or expenditure into account in its assessment, it should take account of both current amounts and reasonably expected future amounts (to the extent appropriate) where it is reasonably foreseeable that these will differ over the anticipated repayment period. <i>Now 5.3.1G(4).</i>

CONC provision	Feedback from respondents	Our response
5.3.1G(3)	This omits the footnote to ILG 4.9, which refers to loans to fund higher/ further education where firms are relying on future potential income. This should not be limited to local authorities or government-backed organisations.	We have added that it may be reasonable to take into account expected future income in the case of loans to fund the provision of further or higher education, provided an appropriate assessment of creditworthiness or affordability is carried out and there is appropriate exercise of forbearance in respect of the timing and amount of initial repayments (for example, deferring or limiting the obligation to repay until the customer's income has reached a specified level). It is important that any assumptions made regarding future income are reasonable and capable of substantiation in the individual case and the products are designed in a way to minimise the risks to the customer. <i>Now 5.3.1G(5).</i>
5.3.1G(4)	This omits crucial text in ILG, which states that the OFT would not necessarily consider repayments to be unsustainable simply because the borrower may miss an occasional payment as it falls due.	We do not consider this is necessary. Sustainability should be assessed by reference to the period of the credit, but we would not necessarily consider credit to be unsustainable merely because in the event the customer misses occasional repayments (and the firm shows appropriate forbearance). <i>Now 5.3.1G(6).</i>
5.3.1G(4)	This omits ILG 4.8, which was a very helpful provision for consumers as it allowed a lender to offer a smaller loan if the affordability assessment suggested this was sustainable. This avoided consumers having to make multiple applications, potentially affecting their CRA file.	We do not consider this is necessary. It is up to lenders whether to require a further application, and the issue of sustainability applies in any event. <i>Now 5.3.1G(6).</i>
5.3.1G(5)	This is inconsistent with 5.3.1G(6) – both would apply to e.g. a credit card. It is unreasonable to expect a firm to make assumptions about the likely duration of an open-end agreement. The FCA should revert to the wording in ILG, which refers to considering the likelihood of the consumer being able to pay off the maximum amount of credit available over a reasonable period of time.	We have amended to refer to making a reasonable assessment of whether the customer is able to meet repayments in a sustainable manner and made the assessment based on reasonable assumptions about the likely duration of the credit (see also 5.3.1G(6) below). <i>Now 5.3.1G(7).</i>

CONC provision	Feedback from respondents	Our response
5.3.1G(6)	It is unreasonable to expect a firm to treat a credit card as though it were a personal loan. The guidance should more accurately reflect ILG in which the expectation is that lenders should consider using certain assumptions – this has now become ‘should use’, which removes lender discretion and could prove problematic.	We have amended to refer to considering the customer’s ability to repay the maximum amount of credit available (ie the credit limit) within a reasonable period, and that in determining what is a reasonable period, a firm may (but is not required to) have regard to the typical duration of a fixed-sum unsecured loan for an equivalent amount of credit and should not use the assumption of the amount necessary to make only the minimum repayment each month. <i>Now 5.3.1G(8).</i>
5.3.1G(9)	This appears to require firms to assess income and expenditure, and to obtain documentary evidence, whereas ILG leaves this open and merely states that if lenders take income/expenditure into account, then they should consider the guidance at ILG 4.15.	We have amended to make clear that if a firm takes income or expenditure into account in an assessment of creditworthiness or affordability, it is not generally sufficient to rely solely on information provided by the customer. <i>Now 5.3.1G(4).</i>
5.3.4R	This appears to require lenders to verify information provided by the customer (e.g. as to income). ‘Reasonable steps’ is subjective and not defined. As such, this is better suited to guidance.	We have downgraded this to guidance on 5.3.2R, and amended to refer to taking adequate steps, insofar as is reasonable and practicable, to ensure that information is complete and correct. <i>Now 5.3.3G.</i>
5.3.5R	This should make clear that an affordability assessment is not required in the case of pawnbroking.	We do not agree. All firms are required to assess creditworthiness and affordability – it is just that, in the case of pawnbroking, the assessment can be more limited, provided that the test is met. <i>Now 5.3.4R.</i>
5.3.9G	‘Not consistent’ is a lower threshold than ILG, which refers to income or employment being clearly inconsistent with other available information.	We have amended to refer to information being ‘clearly inconsistent’. <i>Now 5.3.7G.</i>
5.4.2R	It is not practical for an introducer to comply with this where the introduction relates to a provider of credit rather than a specific product or its price.	We have clarified that, where a firm gives explanations or advice or makes recommendations, it must pay due regard to the customer’s needs and circumstances.
5.4.3R	The obligation to assess creditworthiness and affordability rests with the lender not the broker.	We have deleted this, and also 5.4.5R.

CONC provision	Feedback from respondents	Our response
6.2.2R	This requires firms to assess affordability post-contract to the same extent as if the agreement had not been entered into, and exceeds ILG obligations (which refer to taking reasonable steps). Firms will have an enhanced range of up-to-date information available on which to base decisions, including payment behaviour, and should not be required to use all the same sources of data.	We have separated out the different elements, clarifying that the rules and guidance on creditworthiness assessment apply with any necessary modifications to take into account that the obligations apply at the post-contractual stage, and have added at 6.2.3R that a firm must consider sufficient information available to it at the time of the increase to enable it to make a reasonable assessment.
6.3.4R(1)	Unlike s74B CCA, this does not prescribe that the information must be presented in writing, and it is unclear whether this is intentional.	We have added 'in writing' as this was an oversight.
6.4.2R(2)	Firms should be required in respect of such agreements to advise customers of their right to make an appropriation and the consequences of not doing so.	We have not added this, as it would amount to a substantive change from s81 CCA. We may though consider consulting on such an amendment in future.
6.7.2R	This should incorporate relevant ILG aspects. Firms should monitor customer repayment activity so that they can identify hardship and provide assistance.	We have amended to require a firm to monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties (cf ILG 6.2).
6.7.3G	This does not properly reflect the industry commitments on credit/store cards, and has been drafted as going further, which will cause confusion (given references to 'minimum payments'). The fact that a customer makes minimum payments does not necessarily mean they are in financial difficulties: this may be rational behaviour during a 0% introductory period. The requirements go beyond ILG and existing industry practice.	We have amended to make clear that the appropriate action referred to in 6.7.2R should generally include (i) notifying the customer of the risk of escalating debt, additional interest or charges and potential financial difficulties and (ii) providing contact details for not-for-profit debt advice bodies (cf ILG 6.2). This is not limited to credit/store cards.
6.7.5R(1)	This does not reflect the fact that (as noted in ILG) the industry commitment on minimum repayments applies only to new agreements from 1 April 2011.	We have added that this applies to agreements made on or after 1 April 2011. We may, however, consult in future on whether it should extend to all regulated agreements, whenever made. <i>Now 6.7.5R(3).</i>
6.7.5R(2)	The meaning of this is unclear and unduly prescriptive.	We have clarified that, where a firm applies interest for a period of more than one month, it may – for the purpose of calculating the interest part of the minimum repayment – disregard any interest applied in respect of a period before the period of the statement.
6.7.7R	This is unnecessary as it duplicates CONC 6.2.	We do not agree. This reflects ILG provisions, which in turn reflect industry commitments in the Lending Code.

CONC provision	Feedback from respondents	Our response
6.7.9R	This precludes a customer from receiving an immediate credit limit increase upon request and following a credit assessment. This could cause problems in emergency situations where funds are immediately required (e.g. boiler repair) and could result in customers applying for payday loans instead. The Lending Code disappplies the need for 30 days' notice in respect of a temporary or emergency credit limit increase.	We have amended to disapply the notice requirement in cases where the customer requests a temporary credit limit increase to deal with an emergency situation and this is subject to a creditworthiness assessment. 6.7.7R precludes credit limit increases where a customer is at risk of financial difficulties.
6.7.10R	This seems to preclude withdrawal of a promotional rate in circumstances where the customer's actions have resulted in a breach of the terms and conditions of the promotional rate.	We have amended to make clear that this does not apply where a promotional rate of interest ends, including where this is withdrawn as a result of the customer's breach of the agreement.
6.7.11G	It is not proportionate to require lenders not to raise an interest rate on the basis that a customer has missed a single payment (which may not in itself indicate financial difficulties). This should be aligned with para 154 of the Lending Code which sets out the industry commitments.	We have amended, in line with the Lending Code, to refer to a customer (i) being two or more payments in arrears, (ii) having agreed a repayment plan with the firm or (ii) being in serious discussion with a view to a debt management plan and the firm has been notified of this fact.
6.7.12R	The Lending Code clarifies that 30 days' pre-notification of an interest rate increase is not required where the rate tracks an external index or is the 'go-to' rate following the end of a promotional period.	We have amended to disapply the notice requirement in cases where (i) the rate directly tracks movements in an external index (such as a base rate) which was adequately explained pre-contract and in the credit agreement or (ii) a promotional rate comes to an end.
6.7.14R	This is inconsistent with the Unfair Terms in Consumer Contracts Regulations (UTCCRs), as the prohibition there (on unilaterally altering the terms of a contract without a valid reason for doing so) is subject to the caveat that this is without hindrance to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and the consumer is free to dissolve the contract. This is achieved for credit cards and store cards by 6.7.12R and 6.7.13R.	We do not agree. The UTCCRs implement the Unfair Contract Terms Directive but this is minimum harmonisation, enabling a Member State to go further. ILG 6.20 makes clear that, in all cases, it is an unfair practice to vary interest rates where there is no valid reason for doing so, and we are simply carrying this across into FCA rules. In addition to the FCA rules, when drafting standard term contracts, firms should also have regard to the provisions of the UTCCRs. We have issued guidance in UNFCOG in the FCA Handbook.
6.7.15G(2)	The current wording is unclear. It should be made clear that the specific examples given are not intended to be prescriptive or exhaustive, and that a single default may be taken into account (even if by itself it does not justify a re-price) because it is an obvious sign of risk. ILG text should be added, to put the examples in context.	We have amended to refer to a change in the risk presented by the customer, which justifies the change in the interest rate, but that this would not generally include missing a single repayment or failing to repay in full on one or two occasions.

CONC provision	Feedback from respondents	Our response
6.7.16R	This is disproportionate and goes beyond industry agreed principles, which require lenders to provide such an explanation only if the customer requests it. An explanation of the lender's interpretation of risk in the individual case could potentially lead to gaming of the firm's risk assessment processes and consumer fraud.	We have amended to require the firm to notify the customer, where applicable, that the rate of interest has been increased based on a change in the risk presented by the customer, and to provide a suitable explanation (which may be a generic explanation) upon request.
6.7.17R(1)	The proposed definition is likely to cause confusion as it does not reflect the generally understood meaning of the term. In particular, changing the payment date at the customer's request (e.g. to align with the expected receipt of funds) should not be regarded as refinancing and is unlikely to indicate financial difficulties. The concept could also catch credit cards with flexible repayment dates, and unilateral variations under pre-existing powers. The provisions should be withdrawn pending detailed discussions with industry.	We have amended to state that in CONC 6.7.18R to 6.7.23R 'refinance' means to extend or purport to extend the period over which one or more repayment is to be made by a customer whether by (a) agreeing with the customer to replace, vary or supplement an existing regulated credit agreement; (b) exercising a contractual power contained in an existing regulated credit agreement; or (c) other means, for example, granting an indulgence or waiver to the customer. It does not, however, include where, under an agreement repayable in instalments, the customer requests a change in the regular payment date and as a result there is no charge or additional interest in connection with this change. Note that the definition applies solely in relation to the specified provisions and does not have wider application within CONC.
6.7.17R(2)	The concept of 'forbearance' is much narrower than the commonly accepted legal meaning and conflicts with the examples in 7.3.5G.	We have clarified the meaning of exercise forbearance as follows: "to refinance a regulated credit agreement where the result is that no interest accrues from the date of the refinancing and either: (a) to there is no charge in connection with the refinancing; or (b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing". If a firm temporarily freezes interest and charges and then begins to apply them again, this will not count as 'exercising forbearance'. As above, the definition applies solely in relation to 6.7.18R to 6.7.23R, and 'forbearance' otherwise carries its natural meaning.
6.7.18R	The definition of 'refinance' means that this has much broader application than the situations referred to in ILG (which include the word 'inappropriately').	We do not consider any change is needed. A firm must not encourage a customer to refinance if this leads to the customer's commitments being unsustainable.

CONC provision	Feedback from respondents	Our response
6.7.19R	It is excessive and disproportionate to require firms to make a positive assessment of whether refinancing is in the customer's best interests, and this goes further than ILG 6.24, which requires lenders not to refinance where it is clearly against the borrower's best interests. The evidential requirements to prove it is in the customer's best interest are unclear, e.g. whether this requires firms to undertake a financial impact assessment.	We have amended to require a firm not to refinance a customer's existing credit with the firm (other than by exercising forbearance) unless (i) it does so at the customer's request or with the customer's consent and (ii) the firm reasonably believes that it is not against the customer's best interests to do so.
6.7.26R	This goes beyond CCD by appearing to require an adequate explanation for a unilateral variation.	We have deleted this provision, as it is covered adequately by CCA requirements.
6.8.4R	There is no requirement in s155 CCA or OFT guidance for the response to be in writing.	We have deleted reference to 'in writing'.
7.2.1R	There is no definition of 'vulnerable customer' (which could apply broadly), and only one example is given, in relation to mental capacity limitations.	We have amended to refer to the fair and appropriate treatment of customers who the firm understands or reasonably suspects to be particularly vulnerable, and added at 7.2.2G that customers who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable customers. These examples are illustrative and non-exhaustive.
7.2.1R(1)	It is unclear whether this is intended to mirror the existing FCA definition of 'arrears' (in MCOB). Also, a person may have defaulted on an agreement without being in financial difficulty (e.g. they may be a 'won't pay'). The focus should be on consumers in genuine financial difficulties who are unable to repay debt on time.	We have clarified at 7.1.3G(3) that 'arrears' in CONC 7 includes any payment shortfall. This is irrespective of whether an arrears notice is triggered under CCA.
7.3.3G	This precludes the parties agreeing that repayments can be over a longer period (where sustainable), and also precludes the lender from taking earlier action (where appropriate) to terminate the agreement, which may benefit the customer by preventing the debt escalating and becoming unmanageable. It is inconsistent with ILG, which contemplates that the term of an agreement may be extended if this does not increase the total amount payable to unsustainable levels or otherwise impact adversely on the borrower's financial situation.	We have amended to refer to allowing for unpaid payments to be made within the original term of the agreement, unless (i) the firm reasonably believes that it is appropriate to allow a longer period for repayment (and has no reason to believe this will increase the total amount payable to be unsustainable or otherwise cause a customer to be in financial difficulties) or (ii) the firm reasonably believes that terminating the agreement will mitigate such adverse consequences for the customer (and before terminating the agreement this has been explained to the customer).

CONC provision	Feedback from respondents	Our response
7.3.5G(4)	There should be a definition of 'token payment' as firms are likely to have different understandings. An alternative approach would be to refer to where a customer's expenditure exceeds their income.	We have amended to refer to accepting token payments for a reasonable period from a customer, to allow them to recover from an unexpected income shock, where the customer can demonstrate that meeting the existing debts would not leave them enough for priority debts or other essential living expenses. <i>Now 7.3.5G(3).</i>
7.3.8G	This should apply to all repayment arrangements, in line with the OFT's Debt Collection Guidance (DCG). There should be clarity over what is meant by 'reasonable' in cases where no supporting evidence has been supplied.	We see no need to amend this. It is merely guidance as an example of where a firm is likely to contravene the Principles for Businesses and 7.3.4R.
7.3.11R	This should reflect industry codes, as referred to in ILG 7.12 and DCG 3.7, rather than merely referring to a 'reasonable period' without definition. This would remove uncertainty and subjectivity and ensure a consistent approach across the industry. In addition, in line with the codes and OFT guidance, it should require 'evidence' of intentions and progress, as otherwise firms may be obliged to suspend debt recovery if the customer falsely claims to be developing a plan.	We have amended to refer to situations where the customer informs the firm that they are developing a repayment plan or that a debt counsellor or other person acting on their behalf is doing so. We have also added guidance at 7.3.12G that a 'reasonable period' in 7.3.11R should generally be 30 days where there is evidence of a genuine intention to develop a repayment plan, and the firm should consider extending this for a further 30 days where there is reasonable evidence of demonstrable progress.
7.3.12G	This should be a rule, as lenders should never attempt to enforce a debt where a formal insolvency remedy is in place. In addition, there is no 'low income low asset' order, this is merely a set of criteria that enables a debtor to access bankruptcy in Scotland.	We do not agree, as this is merely guidance on the legal position. We have, however, deleted reference to 'low income low assets' and referred instead to bankruptcy (or in Scotland sequestration). <i>Now 7.3.16G.</i>
7.3.14R	This is ambiguous and may be interpreted subjectively. The wording is much more onerous than DCG.	We have amended to refer to taking reasonable steps to ensure that third parties do not become aware that the customer is being pursued for a debt. <i>Now 7.9.7R.</i>
7.3.15G	A letter, email, text or voicemail could be accessed by a family member. If interpreted restrictively, this could leave firms with few options to pursue a debt. It could create difficulties for firms who have 'debt collection' or similar in their trading name (and a name could be checked and found to be a debt collector).	We have clarified that the reasonable steps required may, for example, require a firm to ensure that (i) post is properly addressed to the customer and marked 'private and confidential' or similar and (ii) where it has a name that indicates its debt collection activities, its name is not shown so that third parties may see the name on the firm's communications. <i>Now 7.9.8G.</i>

CONC provision	Feedback from respondents	Our response
7.4.1R	The meaning of 'status of a debt' is unclear as it is not a term that is widely used within financial services. It is also unclear whether it relates to a statutory request for information under s77 CCA or goes wider.	We have deleted reference to statements of account (as it is sufficient to rely on the customer's statutory rights) and amended to refer to information on the amount of any arrears and the balance owing.
7.5.2R	This should be aligned more closely to DCG. As drafted it could be misinterpreted as applying to pursuit of a customer for repayment where there could be an issue around enforceability of the credit agreement.	We have amended to refer to not pursuing a person whom the firm knows or believes might not be the borrower or hirer under the relevant agreement.
7.5.4R	This would prohibit many lenders' established practice of providing a mandate to a debt collection agent to make a decision on the lender's behalf.	We have amended to make clear that this does not apply where the firm has authority from the lender or owner to accept such an offer.
7.5.6G	Many lenders have arrangements with debt collection agents that allow for monthly payment files to be submitted by the agent, to align with monthly reporting to CRAs. This does not cause any consumer detriment.	We have amended 7.5.5R to make clear that it does not apply where the parties have agreed alternative arrangements and these do not impact adversely on the customer.
7.6.1R	It should be made clear that the obligations on a firm in relation to continuous payment authorities (CPAs) apply to the firm with whom the customer has agreed the CPA and not the payment service provider.	We have amended to refer to a firm exercising (or purporting to exercise) its rights under a CPA and to requesting a payment service provider to make a payment from the customer's payment account.
7.6.2R	This should be amended to make clear that it covers subsequent amendments to the CPA, with the customer's consent and an adequate explanation.	We have amended this to provide guidance on the rule in 7.6.1R, and have clarified that 7.6.1R includes reference to changes to the terms of the CPA, provided that this is with the customer's consent following an adequate explanation of the reason for the proposed change and its effect. <i>Now 7.6.2G.</i>
7.6.2R(1)	This should be expanded to cover payments that are variable upon a certain calculation method, such as a percentage of balance outstanding. It should also clarify how the different elements are intended to operate.	We have amended to clarify that the amount of the payment (or the basis on which payments may be taken) must be specified in or permitted by the agreement and must be explained adequately to the customer. There is a similar provision in relation to default fees and other sums. <i>Now 7.6.2G(1).</i>

CONC provision	Feedback from respondents	Our response
7.6.3G	Firms should be required to repay any amount taken by CPA where it becomes apparent that the payment has caused financial difficulties. For HCSTC this would mirror the voluntary commitment in industry codes.	We have not added this as it is not covered by OFT guidance. However, 7.6.1R makes clear that a firm must not exercise its rights under a CPA other than in accordance with the terms specified, and if a payment is taken without authority, the payment service provider is required under the Payment Services Regulations to reimburse the customer.
7.6.4G	CPA is a very popular and convenient payment method for customers who are in the recoveries cycle and so by definition are in financial difficulty.	We have amended to refer to situations where 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 CPA may exacerbate.
7.6.7R	It is unclear what 'reasonable evidence' is and this may allow firms to continue to seek payments through a CPA after the customer has expressed an inability to meet their expected repayment, while 'evidence' is awaited.	We have added guidance at 7.6.8G clarifying that where a customer informs a firm of being in financial difficulties, the firm should – pending receipt of evidence to that effect – consider suspending the use of CPA.
7.7.5R	This should apply only to customers in financial difficulties, and only in relation to charges beyond those necessary to cover reasonable costs. There needs to be a clear distinction between 'can't pay' and 'won't pay'.	We see no need to amend this. Default charges should not exceed a reasonable estimate of the firm's actual and necessary costs, irrespective of whether the customer is in financial difficulties.
7.8	The provisions are unnecessary and inconsistent with existing requirements in BCOB.	We have deleted this section, as it is sufficient to rely on the rules on 'set-off' in BCOB.
7.9	It is inappropriate to include jurisdictional requirements within CONC.	We do not agree. These are important reminders to firms of relevant obligations. <i>Now 7.8.</i>
7.10.2R	This implies that a firm is responsible for ensuring that a consumer does not misunderstand a communication.	We see no need to amend this. The wording is in line with DCG 3.3d. <i>Now 7.9.2R.</i>
7.10.7R	s176 CCA permits lenders to serve notices to the customer's last known address even though the lender knows or may reasonably suspect that the customer no longer resides there, i.e. they are a 'gone away'.	We have clarified in 7.9.9G that 7.9.7R does not preclude a firm from sending a statutory notice to the customer's last known address, provided that the firm takes the reasonable steps referred to.
7.10.8R	This should be limited to situations where it is unclear whether the individual is the borrower, rather than where that is clear but the amount of the liability is not. Also, the rule should include the ability to discuss the account with an authorised third party.	We have amended to refer to disclosure to an individual without first establishing by suitable appropriate means that the individual is (or acts on behalf of) the borrower or hirer under the relevant agreement. <i>Now 7.9.10R.</i>

CONC provision	Feedback from respondents	Our response
7.10.10R	The current wording is unduly restrictive. Agreeing an exact date and time is often difficult. Flexibility about the exact time on the day is important to retain, provided that the visit is conducted at a reasonable time.	We have added guidance at 7.9.13G to require firms to give the customer adequate notice of the date and likely time of the visit, which must be at a reasonable time of day; and that it is important that the customer is given reasonable time to prepare for the visit.
7.10.12R	This should fully reflect DCG, which refers to coercion and pressure to make decisions.	We have amended to make clear that customers should not be coerced or pressurised into immediate discussions or decisions. <i>Now 7.9.14G.</i>
7.11	This purports to relate to 'vulnerable customers' but in fact is limited to mental capacity. The heading should be limited accordingly or there should be express reference to other causes of vulnerability. The section conflates issues of mental capacity and mental health.	We have amended the heading of 7.10 to refer to treatment of customers with mental capacity limitations, and added a reference in 7.10.4G to 7.2.1R which refers generally to particularly vulnerable customers including those with mental health difficulties.
7.11.1R	Reference should be added to the Money Advice Liaison Group (MALG) Debt and Mental Health Evidence Form as an appropriate tool.	We have included a reference in to 7.2.3G to the MALG Guidelines, but do not consider it necessary to refer also to the Evidence Form. <i>Now 7.10.1R.</i>
7.13	This applies to lenders, but should be extended to firms involved in debt collection or debt administration.	We have added reference in 7.12.3G to 1.2.2R, which requires firms to take reasonable steps to ensure that persons acting on their behalf comply with CONC. In addition, as 7.12 applies to consumer credit lending, this includes exercising, or having the right to exercise, the lender's rights and duties under the agreement.
7.13.2R(2)	In the case of Green Deal plans, the contract requires payments to be made to the electricity supplier, acting as agent of the Green Deal Provider as creditor.	We have amended so that this does not apply where the agreement requires payments to be made to a third party. <i>Now 7.12.2R(2).</i>
7.13.2R(4)	This implies that firms should discontinue sending CCA statements and notices to customers without first obtaining their consent. This would effectively put firms in breach and make agreements unenforceable.	We have amended to clarify that it may be justified to contact a customer directly when sending a statutory notice, provided that the firm takes the reasonable steps referred to. <i>Now 7.12.3G.</i>
7.13.3G	The rules should allow a lender to contact customers directly if the lender has cause to believe that the debt management company is not acting in the customer's best interests. In addition, firms should be allowed to contact customers directly if they are signposting customers to free debt advice charities.	We have also clarified that it may be justified to contact a customer directly where (i) the firm reasonably believes that the third party is acting against the customer's best interests or (ii) the sole purpose of the contact is to signpost the customer to not-for-profit debt advice agencies. <i>Now 7.12.3G.</i>

CONC provision	Feedback from respondents	Our response
7.14.2R	This should also cover pursuing the right person for the wrong amount.	We have amended to refer to avoiding the risk that (i) an individual who is not the true borrower or hirer is pursued for repayment or (ii) the borrower or hirer is pursued for an incorrect amount. <i>Now 7.13.2R.</i>
7.14.5G	This does not fully implement DCG 3.7.	We have added reference to a repayment arrangement or forbearance being in place. <i>Now 7.13.5G.</i>
7.14.9G	The principle that it is unfair for multiple businesses to seek to recover the same debt at the same time is an extremely important one. This is one of the most common concerns reported about debt collection, and it is vital that it is included in the rules.	We have added that a firm should take reasonable steps to ensure that, where it has engaged a third party to recover debts on its behalf, the customer is not subject to multiple approaches by different persons, resulting in repetitive or frequent contact. <i>Now 7.13.10G.</i>
7.14.10G	The exclusion of tracing agents from the FCA regime creates a gap in consumer protection. Given this, the outsourcing provisions should be strengthened.	We have added reference to 1.2.2R, which requires firms to take reasonable steps to ensure that persons acting on their behalf comply with CONC. <i>Now 7.13.12G.</i>
7.15.1R	This should incorporate the OFT/DECC joint guidance in relation to Green Deal, which states that the lender is not required to suspend recovery on the grounds that the disclosure and acknowledgment provisions in the Energy Act regulations were breached, in cases where there is genuine doubt about whether a breach has occurred and so whether the Secretary of State will find in favour of the complainant (as there is a separate complaints mechanism in such cases).	We have added that this does not apply where, in the case of a green deal credit agreement, the customer alleges that the disclosure and acknowledgment provisions in the relevant regulations have been breached and the lender reasonably believes that this is not the case. <i>Now 7.14.1R(2).</i>
7.15.6R	It may not always be necessary to pass on to the lender details of the dispute if the firm is able to resolve the dispute without doing so.	We have amended so that this does not apply if the firm has authority from the lender or owner to investigate a dispute, provided that the outcome of the investigation is notified to the lender or owner. <i>Now 7.14.6R.</i>
7.15.10R	This should be strengthened by guidance along the lines of the examples in the annex to DCG. In particular, it should be made clear that increasing interest and charges with a view to intimidating a borrower paying off their debts more quickly where the firm has received an unacceptable offer may constitute a breach.	We have added that examples of conduct that may contravene 7.15.10R include where a firm responds to an unacceptable offer by immediately (i) sending field agents to visit the customer (or communicating that it will do so) or (ii) increasing substantially the rate of interest or imposing a substantial charge (or communicating that it will do so). <i>Now 7.14.11G.</i>

CONC provision	Feedback from respondents	Our response
7.15.10R	This should be guidance not a rule because compliance or non-compliance rests on a subjective assertion by a consumer. In addition, it should be made clear that a counter-offer is not regarded as intimidation.	We have added in 7.14.13G that merely making a counter-offer or taking steps to enforce an agreement would not contravene the rule, but that the firm should allow the customer (or a person acting on their behalf) a reasonable period of time to consider and respond to the counter-offer.
7.15.13R	Reference to 'full and final settlement' is inappropriate as the offer may only partially settle the debt, and the customer's CRA file would be marked accordingly.	We have amended to refer to the offer having been accepted as settlement of the customer's liability. <i>Now 7.14.13R.</i>
7.16.4R	A firm should not be in breach of the rule if it has a clear audit trail of attempted contact made, but the customer has not responded.	We have not amended, as the law is clear that the customer must have acknowledged the debt during the relevant period. <i>Now 7.15.4R.</i>
8.2.2G(1)	Debt advice providers should signpost consumers to providers of debt advice or other debt solutions appropriate for the consumer if the original provider does not offer such advice or solutions.	We have amended to refer to situations where the firm is unable to provide appropriate advice or to provide an appropriate debt solution. <i>Now 8.3.7R(4).</i>
8.2.5R	The FCA should set out all the circumstances in which debt adjusters can withhold payments from lenders.	We do not agree. It should be apparent when it would be acceptable and appropriate for a firm to retain client money for a specified period of time.
8.2.6R	Firms should not be required to have policies and procedures in relation to vulnerable consumers until the FCA has defined 'vulnerability'.	We do not agree. Firms should already have such policies and procedures in place, in line with OFT guidance. The reference to 'particularly vulnerable customers' includes customers who have mental health difficulties or mental capacity limitations.
8.3.7R(1)	Firms should only be expected to provide impartial information on the 'appropriate' debt solutions available to the consumer.	We do not agree. This provision is about providing impartial information on all debt solutions available, not steering a borrower towards particular debt solutions that the adviser considers most appropriate.
8.3.7R(2)	It is disproportionate to require a full assessment of the customer's financial circumstances in all cases.	We have amended to refer to carrying out a reasonable and reliable assessment, in line with the OFT's Debt Management Guidance (DMG).
8.3.7R(3)	Not-for-profit debt advice bodies should refer consumers to appropriate debt advice providers where they are unable to provide the service the consumer requires.	We have amended to require reference in such circumstances to an appropriate not-for-profit debt advice body.

CONC provision	Feedback from respondents	Our response
8.3.7R(4)	Debt advice providers should signpost consumers to providers of debt advice or other debt solutions appropriate for the consumer if the original provider does not offer such advice or solutions.	We have clarified that a firm has to refer to a customer to, or provide contact details for, another debt advice provider where the firm is unable to provide appropriate advice or an appropriate debt solution for the customer.
8.5.2G	Reference should not be limited to the Common Financial Statement as other suitable forms of financial statement are available.	We have amended to refer to the Common Financial Statement or other suitable forms of financial statement.
8.6.5R	The provisions are not an accurate representation of DMG 3.28c.	We have amended to refer to enabling the customer to take action in their best interest, and added guidance at 8.6.6G that where it becomes clear that the course of action is not producing effects in the customer's best interest and it may be better to withdraw from the repayment plan, the firm should advise the customer accordingly.
8.7.2R	The FCA should adopt the equivalent Debt Management Protocol provision rather than produce its own rule.	We do not agree. Our rule allows firms more flexibility about how they recover their upfront fees and is less likely to result in unintended consequences.
8.7.2R(2)	Guidance is needed on what constitutes 'significant repayments'.	We have added guidance at 8.7.3G stating that the customer's ability to make significant repayments is likely to be undermined if the firm allocates more than half of sums received from the customer in any month to the payment of its fees or charges. We would expect the proportion allocated to fees and charges to fall after six months or (if earlier) once upfront costs are paid off and the proportion of the customer repayments retained by a firm to take account of the level of customer repayments.
8.7.2R(2)	Use of the words 'of a consistent amount' implies that firms are expected to spread the recovery of their upfront costs across the full term of the agreement.	We have deleted the words 'of a consistent amount' but clarified at 8.7.3G(3) that a firm should ensure that any management fees payable by the customer for the administration or operation of the debt management plan are spread evenly over the duration of the plan.
8.7.2R(3)	The FCA should prohibit the use of the full and final settlement model.	We have introduced relevant rules, in particular in relation to the holding of client money. We may look at the suitability of business models in due course.

CONC provision	Feedback from respondents	Our response
8.8.1R(6)	A requirement for firms to provide customers with copies of all correspondence between the firm and lenders is disproportionate and will drive up costs.	We have amended to refer to correspondence and documentation relating to material developments.
9.2.3R	The requirement in SI 1977/330 to send information to lenders up to six months after a credit search is no longer necessary or proportionate, and conflicts with other more recent requirements on CRAs. It should be amended to reduce the obligation on CRAs and the burden/costs for firms receiving such information.	We have modified this to limit notification to any person to whom the CRA provided information relevant to the financial standing of the individual within the previous month (rather than six months). Credit applications will generally be processed in much less than a month, and if the consumer re-applies, the lender is likely to make a fresh CRA search, based on new data.
11.1.1R	This refers to 'customer' but rights under the Distance Marketing Directive are applicable only to consumers. In addition, hire agreements (other than hire-purchase) are subject to the Distance Selling Regulations.	We have amended to 'consumer' and removed references to consumer hire.
13.1	It is inappropriate to include guidance on CCA provisions within CONC, and if anything this should be relegated to separate Handbook guidance. In any event, it should be clarified that it does not extend to s78(4) CCA.	We do not agree. This replaces existing OFT guidance, and is a useful reminder to firms (who might otherwise overlook guidance outside CONC). We have, however, clarified the scope of the guidance.
13.1.3G	If a request is received from a third party acting on behalf of a borrower, that third party must have the borrower's authority.	We have amended to make clear that a firm is not allowed to reveal information to a third party without the borrower's authority. If a copy of such authority is not enclosed with the request, the firm is entitled to reply by asking to see the authority.
13.1.4G	This is incorrect. The heading of the reconstituted agreement will depend on what agreement it relates to, and if the agreement included a right of withdrawal it would not also have included a cancellation notice.	We have amended to refer to the heading prescribed for CCA purposes and any relevant cancellation notice.
13.1.4G	Reference should be added to the CCA Copies of Documents Regulations, which provide permissible exceptions.	We have added guidance at 13.1.4G(7) noting that certain specified matters may be omitted from the copy of the executed agreement to be provided.
13.1.6G	Clarify that the term 'unenforceable' is used here with the meaning applied to it under the CCA rather than under FSMA, and add reference to the decision in the McGuffick case (referred to in the OFT guidance).	We have added reference at 13.1.6G(5) to the fact that the meaning of 'enforcement' under the CCA was considered by the High Court in the McGuffick case and added further material from the OFT guidance.

CONC provision	Feedback from respondents	Our response
15.1.5R	'At an early stage' is subject to interpretation, and is inconsistent with the rules for unsecured lending in s55 CCA. It also does not take account of the pre-contract consideration period for agreements subject to s58(1).	We have amended to require disclosure in good time before a credit agreement is made and (where s58(1) applies) before an unexecuted agreement is sent to the customer for signature.
15.1.5R(2)	It is unreasonable and disproportionate to require disclosure of 'all risks to the customer', and this is inconsistent with the rules for unsecured lending in s55A CCA. ILG refers to 'key features and risks' and states that features of the credit agreement which carry a particular risk to the borrower should be highlighted.	We have amended to require the firm to disclose any features of the prospective agreement which carry a particular risk to the customer (cf 4.3.6R and para 3.4 of the OFT's Second Charge Lending Guidance, SCLG).
15.1.8R	The current draft is framed in a way that makes it practically impossible to comply, or to evidence compliance, and is inconsistent with the rules for unsecured lending.	We have amended to refer to taking reasonable steps to ensure that the customer has understood the nature of the obligations he will take on and the associated risks.
15.1.9G	This applies only at the pre-contractual stage. Firms should also make a similar assessment before any significant increase in the amount of credit advanced.	We have not added this, as it is not covered by the OFT guidance (and so is outside the CBA carve-out). We may consider consulting in future on making this a rule.
15.1.14G	Large elements of chapters 5 and 6 of SCLG have not been included in CONC 15, which is puzzling given the importance of these issues.	We have added reference at 15.1.2G to CONC 7, which applies to matters concerning arrears, default and recovery (including repossession).

Annex 6

Any feedback on compatibility statement in CP13/10 (and our response)

Introduction

- 1 Section 138I of FSMA requires us to explain why we consider that our proposed rules help to ensure that relevant markets work well and advance one or more of our operational objectives. It also requires us to explain how we have had regard to our regulatory principles in discharging our rule-making function.
- 2 We set out a compatibility statement about the proposed consumer credit regime in Annex 7 of CP13/10. This is summarised below, together with our response to feedback we received on proportionality and competition issues.

Our objectives

- 3 The proposals primarily advance our operational objective of securing an appropriate degree of protection for consumers, and are compatible with our strategic objective of ensuring that relevant markets function well.
- 4 In addition to our high-level rules, we have designed specific rules that are intended to ensure that firms in the consumer credit market operate properly and customers are appropriately protected. In particular, this is achieved through:
 - new conduct rules for HCSTC
 - new client money rules and prudential requirements and conduct standards for debt management firms
 - new rules to protect borrowers using P2P platforms
 - conduct rules and guidance for all regulated consumer credit firms
 - clear standards for assessing affordability
 - new rules regarding financial promotions and communications
 - enhanced supervision and reporting requirements.
- 5 In doing so, we have had regard to the regulatory principles in section 3B of FSMA, including the principle that regulatory burdens and restrictions should be proportionate to the expected benefits.
- 6 Some respondents to CP13/10 argued that aspects of our proposals would affect businesses disproportionately, either generally or in particular sectors. Specific concerns included the timescale for implementation (including the proposed transitional arrangements), the principle

of converting OFT guidance into FCA rules (and the consequent risk of enforcement challenge or private action) and the regulatory reporting requirements to be imposed.

Our response

Timescale for implementation

The timetable is driven by the Government decision that responsibility for the regulation of consumer credit will transfer from the OFT to the FCA on 1 April 2014.

We have reviewed the proposed timescales for the implementation of the conduct standards in CONC in light of CP responses, but remain of the view that a six-month transitional is proportionate. In most cases, we are simply transposing existing CCA provisions and OFT guidance. Where firms are complying with these, they are unlikely to need to change their behaviour substantially, although they may need to review systems and procedures to ensure that they can demonstrate compliance. In assessing possible non-compliance, we will of course act reasonably and proportionately.

The policy statement accompanying CP13/10 included made rules for PRIN, SYSC and GEN, so firms have had notice of these since early October. In addition, a number of our general requirements only apply when a firm is fully authorised, so we consider there is sufficient lead-in time to amend processes and procedures.

Converting OFT guidance into rules

As noted in Chapter 4, we have converted OFT fitness guidance into rules where we consider it necessary or appropriate. In particular, where OFT guidance lay down minimum standards, with a presumption that failure to comply could lead to licensing action, or where the guidance supplemented CCA rules including those implementing the CCD. We have, however, reviewed the boundary between rules and guidance, and made a number of adjustments (see Annex 5).

Reporting requirements

We believe that our proposals for regulatory reporting that focus on key pieces of data are proportionate and should not cause undue burdens to firms. The amount of information we are requesting is low when compared to other FCA-authorized firms, and we have limited the burden on smaller firms by only requiring annual reporting. Most firms with a limited permission will be required to complete only one periodic return.

Promoting effective competition

- 7 In Annex 7 of CP13/10, we explained why we consider that the overall impact of our proposals should help promote effective competition. In particular, the expected improvement in firms' levels of compliance with regulatory requirements (arising from the enhanced scrutiny at the authorisation stage, more proactive supervision and the deterrent effect of FSMA enforcement powers) should encourage firms to compete on the provision of affordable loans which meet consumers' needs, and discourage practices liable to cause detriment.

- 8 Some respondents to CP13/10 made points regarding the potential impact on competition. In particular, it was argued that our proposals on HCSTC should also be applied to other credit products, such as credit cards and overdrafts, on the basis either that these are all in the same market or there are similar risks to consumers. There was also concern that price capping may increase market exit and so reduce competition. It was also argued that our proposals generally are likely to have a disproportionate impact on smaller firms and those involved only peripherally in the credit market.

Our response

We consider competition issues as part of our cost benefit analysis in Annex 3.

We have received no evidence which undermines the analysis in CP13/10. We do not propose to change the definition of HTSTC to extend the scope of our proposals to other products. We will take competition issues into consideration as we take forward our price capping analysis.

The impact on smaller firms is mitigated by our proportionate approach in a number of areas, including the 'limited permission' regime where credit activities are ancillary to the supply of goods or non-financial services, and the more limited requirements around regulatory reporting. In addition, the client money requirements will be different for smaller debt management firms.

Annex 7

Any impact of changes in our proposals on mutual societies

Introduction

- 1 Section 138K of FSMA requires us to prepare a statement about the impact of proposed rules on mutual societies. In particular, we are required to set out whether this will be significantly different from their impact on other authorised persons and if so, details of the difference.

The impact of our proposals on mutual societies

- 2 A statement of the impact of our proposals on mutual societies was set out in Annex 8 of CP13/10. This noted that mutual societies may be affected by our proposed rules on conduct standards, regulatory reporting and approved persons.
- 3 We analysed the potential impact in relation to building societies, credit unions, industrial and provident societies, friendly societies and EEA mutual societies.
- 4 We concluded in each case that the impact is likely to be similar to that on other comparable firms.
- 5 We received very little feedback on our impact assessment, and this was generally supportive. Where points were made, these were about the impact of our proposals generally, including on mutual societies, and did not argue that this would be significantly different than for other authorised persons. There were however concerns about the potential implications of the rules of HCSTC for social lenders, which are considered below.
- 6 We have not amended our assessment.

Community development finance institutions

- 7 Some respondents argued that credit providers with a social purpose should be excluded from our HCSTC proposals.
- 8 In particular, community development finance institutions (CDFIs) provide credit and financial education to consumers in deprived areas, with the objective of addressing issues of financial inclusion, access to affordable finance and community investment. In general, their APRs are well below 100%, but there could be some circumstances in which they exceed this threshold, and so would be caught by the HCSTC rules. This could have an impact on their sustainability.

Our response

We have amended the HCSTC definition to exclude loans by CDFIs.

As there is no statutory definition of a CDFI, we have limited the exclusion to the corporate forms which are most commonly adopted by CDFIs:

- registered charities
- community interest companies limited by guarantee
- community benefit societies registered under the Industrial and Provident Societies Acts.

In each case, these are enterprises that are subject to scrutiny of their social purpose by their respective registering authority or regulator, and are precluded from distributing profits to members.

We will also consider whether it may be appropriate to exclude such bodies from the proposed cap on the cost of credit.

Such bodies will, of course, be subject to the remainder of CONC, and our high-level rules, if they engage in regulated activities.

Credit union activities

- 9 Some respondents requested clarification regarding the scope of application of the CCA/CONC rules in relation to credit union agreements.

Our response

Credit unions are outside the HCSTC definition, as they are precluded by law from offering loans at rates higher than those specified. The Government has increased the maximum interest rate that may be charged by a credit union in Great Britain from 2% to 3% per month (APR 42.6%) from 1 April 2014.⁵⁸

Credit unions in Northern Ireland are subject to a cap of 1% per month. Credit unions are exempt from regulation for borrower-lender agreements (ie cash loans) within the interest rate cap.

They are, however, subject to regulation for borrower-lender-supplier agreements, as defined in the RAO⁵⁹.

The scope of the relevant provisions is unchanged from the current CCA regime. In particular, agreements financing a transaction between the borrower and a third party supplier are subject to regulation only where this is under pre-existing arrangements, or in contemplation of future arrangements, between the lender and the supplier.

⁵⁸ The Credit Unions (Maximum Interest Rate on Loans) Order 2013, SI 2013/2589.

⁵⁹ See article 6 of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, SI 2013/1881 – such lending by credit unions is also subject to the interest rate cap.

Appendix 1

Made rules (legal instrument): Consumer Credit sourcebook (CONC)

CONSUMER CREDIT INSTRUMENT 2014

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 137A (The FCA's general rules);
 - (b) section 137B (FCA general rules: clients' money, right to rescind etc);
 - (c) section 137C (FCA general rules: cost of credit and duration of credit agreements);
 - (d) section 137R (Financial promotion rules);
 - (e) section 137T (General supplementary powers);
 - (f) section 138D (Actions for damages); and
 - (g) section 139A (Power of the FCA to give guidance); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.
- B. The rule-making powers referred to 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 April 2014.

Amendments to the Handbook

- D. The Consumer Credit sourcebook (CONC) is amended in accordance with the Annex to this instrument.

Notes

- E. The Annex to this instrument contains notes (indicated by “**Note:**”) indicating where certain provisions which are included in the instrument were previously set out. These notes are included for the convenience of readers but do not form part of the legislative text.

The notes include the following abbreviations in relation to guidance previously issued by the Office of Fair Trading or to secondary legislation:

- (a) Irresponsible Lending Guidance (ILG);
- (b) Debt Management (and credit repair services) Guidance (DMG);
- (c) Credit Brokers and Intermediaries Guidance (CBG)
- (d) Debt Collection Guidance (DCG);
- (e) Mental Capacity Guidance (MCG);
- (f) Second Charge Lending Guidance (SCLG);
- (g) FSA/OFT Joint Guidance on Payment Protection Products (JGPPI);

- (h) Consumer Credit (Advertisements) Regulations 2010, SI 2010/1970 (CCAR);
and
- (i) Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484 (CCAR).

Citation

F. This instrument may be cited as the Consumer Credit Instrument 2014.

By order of the Board of the Financial Conduct Authority
27 February 2014

Annex

Consumer Credit sourcebook (CONC)

In this Annex, all the text is new and is not underlined, except in CONC 12, where additions are shown underlined.

1 Application and purpose and guidance on financial difficulties

1.1 Application and purpose

Application

- 1.1.1 G (1) The Consumer Credit sourcebook (*CONC*) is the specialist sourcebook for *credit-related regulated activities*.
- (2) *CONC* applies as described in this chapter, unless the application of a chapter, section or a *rule* is described differently in the chapters, sections or *rules* in *CONC*.

Purpose

- 1.1.2 G The purpose of *CONC* is to set out the detailed obligations that are specific to *credit-related regulated activities* and activities connected to those activities carried on by *firms*. These build on and add to the high-level obligations, for example, in *PRIN*, *GEN* and *SYSC*, and the requirements in or under the *CCA*.
- 1.1.3 G *Firms* are reminded that other parts of the *FCA Handbook* and *PRA Handbook* also apply to *credit-related regulated activities*. For example, the arrangements for supervising *firms*, including applicable reporting obligations, are described in the Supervision manual (*SUP*) and the detailed requirements for handling complaints are set out in the Dispute Resolution: Complaints sourcebook (*DISP*). The Client Assets sourcebook (*CASS*) also contains *rules* about client money that apply in certain circumstances.

The Principles for Businesses: a reminder

- 1.1.4 G The Principles for Businesses (*PRIN*) apply as a whole to *firms* with respect to *credit-related regulated activities* and *ancillary activities* in relation to *credit-related regulated activities* (see *PRIN* 3). In carrying on their activities, *firms* should pay particular attention to their obligations under:
- (1) *Principle 1* (a *firm* must conduct its business with integrity);
- (2) *Principle 2* (a *firm* must conduct its business with due skill, care and diligence);

- (3) *Principle 3* (a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems);
- (4) *Principle 6* (a *firm* must pay due regard to the interests of its *customers* and treat them fairly);
- (5) *Principle 7* (a *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading);
- (6) *Principle 9* (a *firm* must take reasonable care to ensure the suitability of its advice and discretionary decisions for any *customer* who is entitled to rely upon its judgment);
- (7) *Principle 10* (a *firm* must arrange adequate protection for *clients' assets* when it is responsible for them); and
- (8) *Principle 11* (a *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *appropriate regulator* appropriately anything relating to the *firm* of which that regulator would reasonably expect notice).

1.2 Who? What? Where?

1.2.1 R *CONC* applies:

- (1) unless otherwise stated in, or in relation to, a *rule*, to a *firm*:
 - (a) except where (b) applies, with respect to carrying on *credit-related regulated activities*;
 - (b) with respect to *operating an electronic system in relation to lending* in relation to a *borrower* or prospective *borrower* under a *P2P agreement*; and
- (2) with respect to activities connected to the activities in (a) and (b).

1.2.2 R A *firm* must:

- (1) ensure that its employees and agents comply with *CONC*; and
- (2) take reasonable steps to ensure that other *persons* acting on its behalf comply with *CONC*.

Guidance on appointed representatives

- ### 1.2.3 G (1) Although *CONC* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for

which the *firm* has accepted responsibility (section 39(3) of the *Act*). In determining whether a *firm* has complied with any provision of *CONC*, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the *Act*).

- (2) *Firms* should refer to *SUP 12* (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives*.

- 1.2.4 G The *credit-related regulated activities* comprise *consumer credit lending, credit broking, debt counselling, debt adjusting, debt administration, debt collecting, providing credit information services, providing credit references, operating an electronic system in relation to lending and consumer hiring*.

Where?

- 1.2.5 R *CONC*, except in relation to *CONC 3*, applies with respect to activities carried on by a *firm*:
- (1) with a *customer* whose habitual residence is in the *UK* from an *establishment* maintained by the *firm* (or its *appointed representative*) in the *UK*; or
- (2) with a *customer* whose habitual residence is in the *UK* from an *establishment* of the *firm* (or its *appointed representative*) outside the *UK*.

EEA territorial scope rule: compatibility with European law

- 1.2.6 R (1) *CONC* does not apply to an *incoming ECA provider* where, in providing a service, the provider is acting as such.
- (2) *CONC* applies to an *outgoing ECA provider* where, in providing a service, the provider is acting as such.
- (3) The territorial scope of *CONC* is otherwise modified to the extent necessary to be compatible with European law.
- (4) This *rule* overrides every other *rule* in this sourcebook.

[**Note:** article 3(3) of, and the Annex to, the *E-Commerce Directive*]

1.3 Guidance on financial difficulties

- 1.3.1 G In *CONC* (unless otherwise stated in or in relation to a *rule*), the following matters, among others, of which a *firm* is aware or ought reasonably to be aware, may indicate that a *customer* is in financial difficulties:

- (1) consecutively failing to meet minimum *repayments* in relation to a credit card or store card;
- (2) adverse accurate entries on a credit file, which are not in dispute;
- (3) outstanding county court judgments for non-payment of debt;
- (4) inability to meet *repayments* out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the *customer* having to borrow further to repay existing debts, or the *customer* only being able to meet *repayments* of debts by the disposal of assets or security;
- (5) consecutively failing to meet *repayments* when due;
- (6) agreement to a *debt management plan* or other *debt solution*;
- (7) evidence of discussions with a *firm* (including a *not-for-profit debt advice body*) with a view to entering into a *debt management plan* or other *debt solution* or to seeking *debt counselling*.

2 Conduct of business standards: general

2.1 Application

- 2.1.1 G This chapter applies as stated in the sections which follow.

2.2 General principles for credit-related regulated activities

- 2.2.1 R This section applies to a *firm* with respect to *credit-related regulated activities*.

General principles

- 2.2.2 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. Examples of behaviour by or on behalf of a *firm* which is likely to contravene *Principle 6* include:
- (1) targeting *customers* with *regulated credit agreements* which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason;
 - (2) subjecting *customers* to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion;
 - (3) not allowing *customers* who are unable to make payments a reasonable time and opportunity to meet *repayments*;

- (4) taking steps to repossess a *customer's* home, other than as a last resort.

[**Note** paragraph 7.14 of *ILG* and 6.3 of *SCLG*]

[**Note**: paragraphs 2.3 of *ILG*, 2.2 of *CBG* and 2.3 of *DMG*]

Duty not to use misleading names

- 2.2.3 R A *firm* must not carry on a *credit-related regulated activity* under a name which is likely to mislead *customers* about the status of the *firm* or the nature of its business, or in any other way.

[**Note**: section 25(1AD) of *CCA*]

- 2.2.4 G (1) In relation to *CONC* 2.2.3R, an example of where a name may mislead is if the average *customer* of the *firm* is likely to be misled by the name of the *firm*.
- (2) Examples of the matters concerning a *firm's* status or the nature of its business about which its name may mislead *customers* include:
- (a) the identity or nature of the *firm*;
 - (b) its commercial or profit-seeking status;
 - (c) its role, including any relationship with any other *person*;
 - (d) the extent of its authority;
 - (e) stating or implying that the *firm* is a public body or that it is related or connected in some way to a charitable, not-for-profit or governmental or local governmental organisation or to the courts;
 - (f) the nature of the products or services supplied;
 - (g) the cost of those products or services; and
 - (h) the scale of the business including its geographical scope.

Effect on other rules and legislation

- 2.2.5 R Any specific rule or piece of guidance in *CONC* is without prejudice to the application of *PRIN*, any other *rules* in the *Handbooks*, the *CCA* and secondary legislation made and things done under it, the Consumer Protection from Unfair Trading Regulations 2008, the Unfair Terms in Consumer Contracts Regulations 1999, Part 8 of the Enterprise Act 2002 and any other applicable consumer protection legislation.

2.3 Conduct of business: lenders and restrictions on provision of credit card

cheques

Application

- 2.3.1 R This section applies to a *firm* with respect to *consumer credit lending*.

General conduct

- 2.3.2 R A *firm* must explain the key features of a *regulated credit agreement* to enable the *customer* to make an informed choice as required by *CONC* 4.2.5R (adequate explanations).
[**Note:** paragraph 2.2 of *ILG*]
- 2.3.3 G *CONC* 6.7.2R requires a *firm* to monitor a *customer's* repayment record and take appropriate action where there are signs of actual or possible repayment difficulties. .
- 2.3.4 R A *firm* must take reasonable steps to satisfy itself that any *credit brokers* with whom the *firm* deals are *authorised persons* or *appointed representatives*.
[**Note:** paragraph 1.27 of *CBG*]

Provision of credit card cheques

- 2.3.5 R (1) A *firm* may provide *credit card cheques* only to a *customer* who has asked for them.
[**Note:** section 51A(2) of *CCA*]
- (2) A *firm* may provide *credit card cheques* only on a single occasion in respect of each request that is made.
[**Note:** section 51A(3) of *CCA*]
- (3) The number of *credit card cheques* provided in respect of a request must not exceed three (or, if less, the number requested).
[**Note:** section 51A(4) of *CCA*]
- (4) Where a single request is made for the provision of *credit card cheques* in connection with more than one *credit-token agreement*, (2) and (3) apply as if a separate request had been made for each agreement.
[**Note:** section 51A(5) of *CCA*]
- (5) Where more than one request for the provision of *credit card cheques* is made in the same document or at the same time:
- (a) they may be provided in respect of only one of the requests, but
- (b) if the requests relate to more than one *credit-token agreement*,

in relation to each agreement they may be provided only in respect of one of the requests made in relation to that agreement.

[**Note:** section 51A(6) of *CCA*]

- (6) This rule does not apply to *credit card cheques* provided in connection with a *credit-token agreement* that is entered into by the *customer* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *customer*.

[**Note:** section 51B(1) of *CCA*]

- (7) If a *credit-token agreement* includes a declaration made by the *customer* to the effect that the agreement is entered into as mentioned in (6), the agreement is treated for the purposes of (6) as having been so entered into.

[**Note:** section 51B(2) of *CCA*]

- (8) The declaration in (7) must be in the form and content set out in *CONC* Appendix 1 for the exemption relating to business.

- (9) Paragraph (7) does not apply if, when the agreement is entered into:

- (a) the *lender*; or
 (b) any *person* who has acted on behalf of the *lender* in connection with the entering into of the agreement;

knows, or has reasonable cause to suspect, that the agreement is not entered into as mentioned in (6).

[**Note:** section 51B(3) of *CCA*]

- (10) Where an agreement has two or more *lenders*, references in (9) to the *lender* are to any one or more of them.

[**Note:** section 51B(5) of *CCA*]

2.4 Credit references: conduct of business: lenders and owners

Application

- 2.4.1 R This section applies:

- (1) to a *firm* with respect to *consumer credit lending*; or
 (2) to a *firm* with respect to *consumer hiring*.

Disclosure of name and address of credit reference agencies consulted

- 2.4.2 R (1) Not later than the *lender* (“L”) informs a *credit broker* that L is not

willing to make a *regulated credit agreement*, L must, unless L informs the *customer* directly that L is not willing to make the agreement, inform the *credit broker* of the name and address (including an appropriate e-mail address) of any *credit reference agency* from which L has, during the negotiations relating to the proposed agreement, applied for information about the financial standing of the *customer*.

[**Note:** regulation 2 of SI 1977/330]

- (2) Not later than the owner (“O”) informs a *credit broker* that O is not willing to make a *regulated consumer hire agreement*, O must, unless O informs the *customer* directly that O is not willing to make the agreement, inform the *credit broker* of the name and address (including an appropriate e-mail address) of any *credit reference agency* from which O has, during the negotiations relating to the proposed agreement, applied for information about the financial standing of the *customer*.

[**Note:** regulation 2 of SI 1977/330]

Searching credit files

- 2.4.3 G A *firm* undertaking a credit reference search should not leave evidence of an application on a credit file where a *customer* is not yet ready to apply. Where practicable, *firms* should facilitate *customers* shopping around for *credit* by offering a ‘quotation search’ facility.

[**Note:** paragraph 3.13 (box 2) of *ILG*]

2.5 Conduct of business: credit broking

Application

- 2.5.1 R This section applies to a *firm* with respect to *credit broking*.
- 2.5.2 G The scope of *credit broking* for the introducing activities (article 36A(a) to (c) of the *Regulated Activities Order*) covers *regulated credit agreements* and *regulated consumer hire agreements*. But additionally in relation to *credit agreements* it covers introductions concerning exempt agreements under articles 60C to 60H of that Order (other than agreements under article 60F of that Order (exempt agreements: exemptions relating to the number of repayments to be made)). Additionally in relation to *consumer hire agreements*, it covers exempt agreements under articles 60O and 60Q of that Order.

Conduct of business

- 2.5.3 R A *firm* must:
- (1) where it has responsibility for doing so, explain the key features of a

regulated credit agreement to enable the *customer* to make an informed choice as required by *CONC 4.2.5R*;

[**Note:** paragraphs 4.27 to 4.30 of *CBG* and 2.2 of *ILG*]

- (2) take reasonable steps to satisfy itself that a product it wishes to recommend to a *customer* is not unsuitable for the *customer's* needs and circumstances;

[**Note:** paragraph 4.22 of *CBG*]

- (3) advise a *customer* to read, and allow the *customer* sufficient opportunity to consider, the terms and conditions of a *credit agreement* or *consumer hire agreement* before entering into it;

[**Note:** paragraph 3.9l of *CBG*]

- (4) before referring the *customer* to a third party which carries on *regulated activities* or to a claims management service (within the meaning of section 4 of the Compensation Act 2006) or other services, obtain the *customer's* consent, after having explained why the *customer's* details are to be disclosed to that third party;

[**Note:** paragraph 3.9r of *CBG*]

- (5) before effecting an introduction of a *customer* to a *lender* or *owner* in relation to a *credit agreement* or *consumer hire agreement*, or before entering into such an agreement on behalf of the *lender* or *owner*, disclose (where applicable) the fact that the *lender* or *owner* is linked to the *firm* by being a member of the same *group* as the *firm*;

[**Note:** paragraph 3.9y of *CBG*]

- (6) bring to the attention of a *customer* how the *firm* uses the *customer's* personal data it collects, in a manner appropriate to the means of communication used;

[**Note:** paragraph 3.9q of *CBG*]

- (7) provide *customers* with a clear and simple method to cancel their consent for the processing of their personal data;

[**Note:** paragraph 3.9u of *CBG*]

- (8) at the request of a *customer*, disclose from where the *customer's* personal data was obtained;

[**Note:** paragraph 3.9w of *CBG*]

- (9) take reasonable steps not to pass a *customer's* personal data to a business which carries on a *credit-related regulated activity* which has no *permission* for that activity.

[**Note:** paragraph 3.9x of *CBG*]

2.5.4 G A *firm* may comply with *CONC 2.5.3R(6)* by presenting to the *customer* a

privacy notice. The Information Commissioner's Office has prepared the Privacy Notices Code of Practice.

Conduct of business: credit references

- 2.5.5 R Where a *credit broker* (“B”) is a negotiator (within the meaning of section 56(1) of the *CCA*), B must, at the same time as B gives notice to a *customer*, under section 157(1) of the *CCA* (which relates to the duty to disclose on request the name and address of any *credit reference agency* consulted by B) also give the *customer* notice of the name and address of any *credit reference agency* of which B has been informed under *CONC 2.4.2R*.

[**Note:** regulation 3 of SI 1977/ 330]

- 2.5.6 R Where a *credit broker* (“B”) is not a negotiator (within the meaning of section 56(1) of the *CCA*), B must, within seven *working days* after receiving a request in writing for any such information, which is made by a *customer* within 28 days after the termination of any negotiations relating to a *regulated credit agreement* or a *regulated consumer hire agreement* whether on the making of the agreement or otherwise, give to the *customer* notice of:

- (1) the name and address of any *credit reference agency* from which B has during those negotiations applied for information about the financial standing of the *customer*; and
- (2) the name and address of any *credit reference agency* of which B has been informed under *CONC 2.4.2R*.

[**Note:** regulation 4 of SI 1977/ 330]

Searching credit files

- 2.5.7 G A *firm* undertaking a credit reference search should not leave evidence of an application on a credit file where a *customer* is not yet ready to apply. Where practicable, *firms* should facilitate *customers* shopping around for *credit* by offering a ‘quotation search’ facility”.

[**Note:** paragraph 3.13 (box 2) of *ILG*]

Unfair business practices: credit brokers

- 2.5.8 R A *firm* must not:
- (1) make or cause to be made unsolicited calls to numbers entered on the register kept under regulation 25 or 26 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 or to a *customer* who has notified the *firm* not to call the number being used to call;

[**Note:** paragraph 3.9a of *CBG*]

- (2) other than where:
 - (a) the *firm* has obtained the contact details of a *customer* (C) in the course of the sale or negotiations for the sale of a product

or service to C;

- (b) the direct marketing is in respect of the *firm's* similar products and services only;
- (c) C has been given a simple means of refusing (free of charge, except for the cost of the transmission of the refusal) the use of the contact details for the purposes of such direct marketing, at the time that the details were initially collected and, where C did not initially refuse the use of the details, at the time of each subsequent communication; and
- (d) the *firm* has previously explained that the following calls or *electronic communications* would be sent or made or caused to be sent or made by the *firm* and following that explanation C consented for the time being to such calls or communications;

send or cause to be sent an *electronic communication*, for the purposes of marketing, to C, or make or cause to be made by means of an automated calling system (which is capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system, and transmitting sounds which are not live speech for reception by persons at some or all of the destinations so called) a call to C, for the purposes of marketing;

[Note paragraph 3.9b of *CBG*]

- (3) make or cause to be made by means of an automated calling system (see paragraph (2)) a call to a *customer*, for the purposes of marketing, after the *firm* has received a request from the *customer* to stop doing so;

[Note: paragraph 3.9c of *CBG*]

- (4) send, or cause to be sent, an *electronic communication* to a *customer*, for the purposes of marketing, after the *firm* has received a request from the *customer* to stop doing so;

[Note: paragraph 3.9c of *CBG*]

- (5) visit a *customer* at a time that is known to be, or reasonably likely to be, inconvenient or particularly undesirable to the *customer*;

[Note: paragraph 3.9f of *CBG*]

- (6) refuse to end a visit to a *customer* or to leave the *customer's* home, when requested to do so;

[Note: paragraph 3.9g of *CBG*]

- (7) unfairly request, suggest or direct a *customer* to make contact on a premium rate telephone number;

[**Note:** paragraph 3.9h of *CBG*]

- (8) conduct a telephone call with a *customer* who has called on a premium rate number for an unreasonable period;

[**Note:** paragraph 3.9i of *CBG*]

- (9) inappropriately offer a financial or other incentive or inducement to a *customer* to enter, immediately or quickly, into a *credit agreement* or *consumer hire agreement* to which this section applies;

[**Note:** paragraph 3.9j of *CBG*]

- (10) effect an introduction to a *lender* or an *owner* or to another *credit broker*, where the *firm* has considered whether the *customer* might meet the relevant lending or hiring criteria and it is or should be apparent to the *firm* that the *customer* does not meet those criteria;

[**Note:** paragraph 3.9aa and 4.41i of *CBG*]

- (11) suggest to a *customer* that an application for *credit* will be met in full when a lower amount may be offered;

[**Note:** paragraph 4.26d of *CBG*]

- (12) secure more *credit* for a *customer* than was requested where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the *firm* or of a *person* acting on its behalf, rather than in the best interests of the *customer*;

[**Note:** paragraph 4.26e of *CBG*]

- (13) give preference to the credit products of a particular *lender* where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the *firm* or of a *person* acting on its behalf, rather than in the best interests of the *customer*;

[**Note:** paragraph 4.41k of *CBG*]

- (14) in relation to a payment protection product (the meaning of which is set out in *CONC 2.5.10R*) to the *credit agreement* or *consumer hire agreement* (whether the product is optional or required as a condition of the *credit agreement* or *consumer hire agreement*):

- (a) pressurise the *customer* to buy the product; or

[**Note:** paragraph 2.62, 2nd bullet of *JGPPI*]

- (b) offer undue incentives to the *customer* to buy the product;

[**Note:** paragraph 2.62, 2nd bullet of *JGPPI*]

- (15) in relation to an insurance product or service or other linked product or service to the *credit agreement* or *consumer hire agreement* (whether the service or product is optional or required as a condition of the *credit agreement* or *consumer hire agreement*) discourage or

prevent the *customer* from seeking or obtaining the product or service from another source;

[**Note:** paragraph 4.26f of CBG]

- (16) encourage a *customer* to enter into a *credit agreement* which is secured in any way, to which this section applies, to replace an unsecured *credit agreement* or to consolidate other debts where the *firm* knows, or ought reasonably to know, that it is not in the best interests of the *customer*;

[**Note:** paragraph 4.26g of CBG]

- (17) unfairly encourage a *customer* to increase, consolidate or refinance (which expression has the same meaning as in CONC 6.7.17R) an existing debt to the extent that *repayments* under an agreement would be *unsustainable* for the *customer*;

[**Note:** paragraph 4.26h of CBG]

- (18) encourage a *customer* to take out additional *credit* or to extend the term of an existing *credit agreement* where to do so is, or is reasonably likely to be, to the detriment of a *customer*;

[**Note:** paragraph 4.41h of CBG]

- (19) charge a fee to a *customer* for effecting an introduction (directly or indirectly) to a *lender* or *owner* that provides a type of *credit* or hire of a different type to that:

- (a) promised to the *customer*; or
- (b) promoted by the *firm* to the *customer*; or
- (c) which the *firm* is aware the *customer* is seeking;

unless the *customer*, after the *firm* has explained the reason for the fee, consents to such an introduction;

[**Note:** paragraph 4.17f of CBG]

- (20) take a fee from a *customer's* bank account without the *customer's* express authorisation to do so;

[**Note:** paragraph 4.17c of CBG]

- (21) unfairly pass a *customer's* personal data to a third party without obtaining the *customer's* consent to do so after having explained the reason for disclosing the data;

[**Note:** paragraph 3.9s of CBG]

- (22) unfairly pass a *customer's* personal data to a third party for a purpose other than that for which consent was sought and given.

[**Note:** paragraph 3.9t of CBG]

Guidance on unfair business practices

- 2.5.9 G (1) It is likely to be an inappropriate offer of an inducement or incentive to enter into an *regulated credit agreement* or a *regulated consumer hire agreement* to state that the offer in relation to the agreement will be withdrawn or the terms and conditions of the offer will worsen if the agreement is not signed immediately or within a stated period after the communication, unless the *firm's* offer on those terms and conditions will in fact be withdrawn or worsen in the period indicated to the *customer*.
- [Note: paragraph 3.9j (box) of *CBG*]
- (2) An example of unfairly requesting, suggesting or directing a *customer* to a premium rate telephone number is likely to be to do so in relation to a *customer* wishing to complain about the *firm's* service or to request a refund, including, for example, under section 155 of the *CCA*.
- [Note: paragraph 6.19f of *CBG*]
- (3) It is unlikely to be reasonable for it to be necessary for a *customer* to make more than one telephone call exceeding 15 minutes to a *firm* to apply for *credit*. Where a longer call is required, the *firm* should ensure the call is not made on a premium rate telephone number.
- [Note: paragraph 3.9i (box) of *CBG*]
- (4) It is unlikely to be reasonable to request, suggest or direct a *customer* to call the *firm* repeatedly to check on the status of an application. A call to check on the status of an application should not last more than five minutes.
- [Note: paragraph 3.9i (box) of *CBG*]
- (5) A *firm* should disclose to a *customer* the amount, or likely amount, of any fee payable for its services as early as practicable in the *firm's* dealings with the *customer*. *CONC* 4.4.2R requires a *credit broker* to disclose any such fee agreed with the *customer* in writing or in another *durable medium*.
- [Note: paragraphs 2.2, 7th bullet, 3.7l and 4.9 of *CBG*]
- (6) Where a *firm* makes an introduction of the type referred to in *CONC* 2.5.8R(19) the *firm* should ensure that the *customer's* consent is preceded by a full explanation of the key features and key risks of the product to which the introduction applies.
- [Note: paragraph 4.17f of *CBG*]
- (7) A *customer's* personal data must be processed fairly and lawfully and only for specified purposes. While it may be possible to pass sensitive personal data in specified and limited circumstances to certain third parties without the *customer's* consent where a condition

of the Data Protection Act 1998 is satisfied, a *firm* (other than where it is under a statutory obligation to pass personal data to a third party) should generally seek the *customer's* consent before passing such personal data to a third party.

[**Note:** paragraph 3.9t (box) of *CBG*]

- (8) An example of where it is likely to be unfair for a *credit broker* in receipt of a *customer's* personal data to pass it to a third party, is where the personal data is passed on in return for a fee to a claims management firm, without the *customer's* consent.

2.5.10 R In *CONC* 2.5.8R(14):

- (1) payment protection product means a product or feature of a product designed to offer *customers* short-term protection against potential loss of income, by providing the means for them to meet (or temporarily suspend) their financial obligations including *repayments* under a *credit agreement*. Payment protection products include, in particular, short term income protection, debt freeze or debt waiver;
- (2) short-term income protection means a contract of insurance which provides a pre-agreed amount paid directly to the policyholder or the policyholder's nominee in the event that the policyholder experiences involuntary unemployment or incapacity as a result of accident or sickness and may be combined with other forms of insurance cover or include other benefits and which:
- (a) has a maximum time-limited benefit duration;
- (b) is written for a term which is less than 5 years and not predetermined by the term of any *credit agreement*; and
- (c) can be terminated by the *insurer*.

2.5.11 G In *CONC* 2.5.8R(14) and 2.5.10R(1), the protection offered by a payment protection product will typically be triggered by life events such as accident, sickness and/or unemployment, although other events may be covered where they impact on the *consumer's* ability to meet certain financial commitments. The triggering events will usually be specified in the agreement but may be subject to some discretion (by the provider) at the time of claim.

2.6 **Conduct of business: debt counselling, debt adjusting and providing credit information services**

Application

2.6.1 R This section applies to a *firm* with respect to:

- (1) *debt counselling*; or

- (2) *debt adjusting*; or
- (3) *providing credit information services*.

Conduct of business

- 2.6.2 R A *firm* must bring to the attention of a *customer* how the *firm* uses the *customer's* personal data it collects in a manner appropriate to the means of communication used.
- [Note: paragraph 2.5e of *DMG*]

Unfair business practices

- 2.6.3 R A *firm* must not:
- (1) by any means, including during a visit to a *customer*, coerce or use pressure to sell its services;
[Note: paragraph 3.12o of *DMG*]
 - (2) take advantage of a *customer's* lack of knowledge or understanding of the law relating to consumer credit or to insolvency or to otherwise dealing with debts in order to sell its services;
[Note: paragraph 3.12o of *DMG*]
 - (3) in relation to a visit to a *customer*:
 - (a) make an appointment to visit or visit at a time which is unreasonable or inconvenient from the *customer's* point of view, unless the *consumer* expressly consents;
[Note: paragraph 3.15a of *DMG*]
 - (b) refuse to end the visit, refuse to leave the *customer's* home or ignore the *customer's* request not to return there;
[Note: paragraph 3.15b of *DMG*]
 - (c) make a visit which is unreasonably or unnecessarily long;
[Note: paragraph 3.15c of *DMG*]
 - (4) conduct a telephone call with a *customer* who has called on a premium rate number for an unreasonable period.
[Note: paragraph 3.18x of *DMG*]

Guidance on unfair business practices

- 2.6.4 G (1) It is an offence for a *person* carrying on the business of *debt counselling, debt adjusting or providing credit information services* to canvass its services off trade premises under section 154 of the *CCA*. The definition of canvassing in section 153 of the *CCA* would

include an unsolicited personal visit to a *customer's* home.

[**Note:** paragraph 3.13 of *DMG*]

- (2) Where a long telephone call is required, the *firm* should ensure the call is not made on a premium rate number.
- (3) It is unlikely to be reasonable for it to be necessary for a *customer* to make a call exceeding one hour to a *firm* in relation to *debt counselling* or *debt adjusting*. Where a call longer than 15 minutes is required for the *firm* to provide its service to the *customer*, the *firm* should ensure the call is not made on a premium rate phone number.
- (4) It is unlikely to be reasonable for a call by the *customer* to check on the status of the *customer's* case to last more than five minutes.

2.7 Distance marketing

Application

- 2.7.1 R (1) Subject to (2) and (3), this section applies to a *firm* that carries on any distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK* or another *EEA State*.
- (2) This section does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.
- (3) This section does not apply to an activity in relation to a *consumer hire agreement*.

The distance marketing disclosure rules

- 2.7.2 R (1) Subject to (2), (3) and (4), a *firm* must provide a *consumer* with the distance marketing information (*CONC 2 Annex 1R*) in good time before the *consumer* is bound by a *distance contract* or offer.

[**Note:** regulation 7(1) of SI 2004/2095]

[**Note:** articles 3(1) and 4(5) of the *Distance Marketing Directive*]

- (2) Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of *CONC 2 Annex 1R*.
- (3) Paragraph (1) and the requirement to provide the abbreviated distance marketing information (*CONC 2 Annex 2R*) in *CONC 2.7.11R* do not apply to a *distance contract* which is also a *credit agreement* (other than an *authorised non-business overdraft agreement*) in respect of which the *firm* has disclosed the pre-contract credit information required by regulations 3, 4 or 5, as the case may be, and 7, of the

disclosure regulations (information to be disclosed to a debtor before a regulated consumer credit agreement is made) in accordance with the *disclosure regulations*.

[**Note:** regulation 7(6) of SI 2004/2095]

- (4) Paragraph (1) and the requirement to provide the abbreviated distance marketing information (*CONC 2 Annex 2R*) in *CONC 2.7.11R* do not apply to a *distance contract* which is also an *authorised non-business overdraft agreement* in respect of which:
- (a) the *firm* has disclosed the information required by regulation 10(2) of the *disclosure regulations* (authorised non-business overdraft agreements) by means of the European Consumer Credit Information form in accordance with the *disclosure regulations* and, unless *CONC 2.7.12R* would otherwise apply, a copy of the contractual terms and conditions;
 - (b) in the case of a voice telephony communication, the *firm* has:
 - (i) disclosed the information required by regulation 10(5) of the *disclosure regulations* in accordance with the *disclosure regulations*; and
 - (ii) provided a copy of the written agreement in accordance with section 61B(2)(b) of the *CCA*; or
 - (c) in the case of an agreement made using a means of distance communication, other than voice telephony communication, where a *firm* is unable to provide the information required by regulation 10(2) of the *disclosure regulations*, the *firm* has:
 - (i) provided a copy of the written agreement in accordance with section 61B(2)(c) of the *CCA*, and
 - (ii) unless *CONC 2.7.12R* would otherwise apply, in relation to the prospective *distance contract*, provided information which accurately reflects the contractual obligations which would arise under the law presumed to be applicable to that contract.

[**Note:** regulation 7(6) of SI 2004/2095]

- 2.7.3 R A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent.

[**Note:** regulation 7(2) and (3) of SI 2004/2095]

[**Note:** article 3(2) of the *Distance Marketing Directive*]

- 2.7.4 R When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purposes of its call explicitly clear at the beginning of the conversation.

[Note: regulation 7(4) of SI 2004/2095]

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

- 2.7.5 R A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase accurately reflects the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: regulation 7(5) of SI 2004/2095]

[Note: article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

- 2.7.6 R A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (*CONC 2.7.2R* to *CONC 2.7.5R*) in a durable medium. That information must be made available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: regulation 8(1) of SI 2004/2095]

[Note: articles 4(5) and 5(1) of the *Distance Marketing Directive*]

- 2.7.7 G (1) Activities in relation to a *consumer hire agreement* are not financial services within the meaning of the *Distance Marketing Directive* and do not fall within *CONC 2.7*. Instead such agreements fall within the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334).
- (2) A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Commencing performance of the distance contract

- 2.7.8 R The performance of the *distance contract* may only begin after the *consumer* has given approval.

[Note: article 7(1) of the *Distance Marketing Directive*]

Exception: successive operations

- 2.7.9 R In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this chapter only apply to the

initial agreement.

[**Note:** regulation 5(1) of SI 2004/2095]

[**Note:** article 1(2) of the *Distance Marketing Directive*]

2.7.10 R (1) If there is no initial service agreement but the successive or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (*CONC 2.7.2R* to *CONC 2.7.5R*) will only apply:

- (a) when the first operation is performed; and
- (b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[**Note:** regulation 5(2) of SI 2004/2095]

[**Note:** recital 16 and article 1(2) of the *Distance Marketing Directive*]

(2) In this section:

- (a) "initial service agreement" includes the opening of a bank account or the making of a *credit-token agreement*;
- (b) "operations" includes the deposit or withdrawal of funds to or from a bank account and payments by a credit card or a store card; and
- (c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing retail banking service, does not constitute an "operation" but an additional contract to which the *rules* in this chapter apply.

[**Note:** regulation 5 of SI 2004/2095]

[**Note:** recital 17 of the *Distance Marketing Directive*]

Exception: voice telephony communications

2.7.11 R In the case of voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (*CONC 2 Annex 2R*) needs to be provided during that communication. However, unless another exception applies (such as the exemption for means of distance communication not enabling disclosure), a *firm* must still provide the distance marketing information (*CONC 2 Annex 1R*) in a *durable medium* that is available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** regulation 7(4)(b) of SI 2004/2095]

[**Note:** articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

Exception: means of distance communication not enabling disclosure

- 2.7.12 R A *firm* may provide the distance marketing information (*CONC 2 Annex 1R*) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** article 5(2) of the *Distance Marketing Directive*]

Exception: contracts for payment services

- 2.7.13 G Where a *distance contract* covers both *payment services* and *non-payment services*, the exception in *CONC 2.7.2R(2)* applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

Consumer's right to request paper copies and change the means of communication

- 2.7.14 R At any time during the contractual relationship, the *consumer* is entitled, at request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[**Note:** regulation 8(2) and (4) of SI 2004/2095]

[**Note:** article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

- 2.7.15 R (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer* in the event of an unsolicited supply of services. The absence of a reply does not constitute consent.
- (2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[**Note:** regulation 15 of SI 2004/2095]

[**Note:** article 9 of the *Distance Marketing Directive*]

Mandatory nature of consumer's right

- 2.7.16 R If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[**Note:** article 12 of the *Distance Marketing Directive*]

Contracts governed by law of a third party state

- 2.7.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of one or more *EEA States*.

[**Note:** regulation 16(3) of SI 2004/2095]

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

2.8 E-commerce

Application

- 2.8.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *UK* with or for a *person* in the *UK* or another *EEA State*.

Information about the firm and its products or services

- 2.8.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:
- (1) its name;
 - (2) the geographic address at which it is established;
 - (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
 - (4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *Financial Services Register* and includes its firm reference number;
 - (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA*

State of establishment and the means to access them; and

- (d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

- 2.8.3 R If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[**Note:** article 5(2) of the *E-Commerce Directive*]

- 2.8.4 R A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[**Note:** article 6 of the *E-Commerce Directive*]

- 2.8.5 R An unsolicited commercial communication sent by e-mail by a *firm* established in the *UK* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

- 2.8.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):
- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filled in by the *firm* and whether it will be accessible;

- (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
- (d) the languages offered for the conclusion of the contract;
- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means) acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
- (4) make available to the *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[**Note:** articles 10(1) and 11(1) and (2) of the *E-Commerce Directive*]

- 2.8.7 R For the purposes of *CONC 2.8.6R(3)*, an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.
- 2.8.8 R Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

- 2.8.9 R The requirements relating to the placing and receipt of orders (*CONC 2.8.6R*) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** articles 10(4) and 11(3) of the *E-Commerce Directive*]

2.9 Prohibition of unsolicited credit tokens

Application

- 2.9.1 R This section applies to any *firm*.

Prohibition

- 2.9.2 R (1) A *firm* must not give a *person* a *credit token* if he has not asked for it.
[**Note:** section 51 of *CCA*]
- (2) A request in (1) must be in a document signed by the *person* making the request, unless the *credit-token agreement* is a *small borrower-*

lender-supplier agreement.

- (3) Paragraph (1) does not apply to the giving of a *credit token* to a *person*:
- (a) for use under a *credit-token agreement* already made; or
 - (b) in renewal or replacement of a *credit token* previously accepted by that *person* under a *credit-token agreement* which continues in force, whether or not varied.

- 2.9.3 G Section 51 of the CCA was repealed by article 20(15) of the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(No 2) Order 2013 (SI 2013/1881). However, section 51 is saved for the purposes of regulation 52 of the *Payment Services Regulations*, the effect being that the section continues to apply in relation to a *regulated credit agreement* in place of regulation 58(1)(b) of the *Payment Services Regulations*.

2.10 Mental capacity guidance

Application

- 2.10.1 G This section applies:
- (1) to a *firm*;
 - (2) in relation to the following decisions:
 - (a) granting *credit* under a *regulated credit agreement*;
 - (b) significantly increasing the amount of *credit* under a *regulated credit agreement*; and
 - (c) setting a *credit limit* for *running account credit*.
- 2.10.2 G
- (1) The Mental Capacity Act 2005 sets out the legal framework concerning mental capacity for England and Wales. The Ministry of Justice has issued the Mental Capacity Act Code of Practice which, among other things, includes information on indications of mental capacity limitations and on how to assist people with making decisions.
 - (2) The Adults with Incapacity (Scotland) Act 2000 provides the framework in Scotland for safeguarding the welfare and managing the finances of adults who lack capacity due to mental disorder or inability to communicate.
 - (3) References in this section to a *firm's* knowledge, understanding, observation, suspicion, assumption or belief includes that of the *firm's* employees, *appointed representatives*, agents and any others

who act on behalf of the *firm*.

[**Note:** footnote 2 of *MCG*]

- (4) In making a decision within *CONC* 2.10.1G, a *firm* should consider the *customer's* individual circumstances.

[**Note:** paragraph 2.4 of *MCG*]

Mental capacity

- 2.10.3 G Mental capacity is a person's ability to make a decision. Whether or not a *customer* has the ability to understand, remember, and weigh up relevant information will determine whether the *customer* is able to make a responsible borrowing decision based on that information.
[**Note:** paragraph 2.1 of *MCG*]
- 2.10.4 G A *firm* should assume a *customer* has mental capacity at the time the decision has to be made, unless the *firm* knows, or is told by a *person* it reasonably believes should know, or reasonably suspects, that the *customer* lacks capacity.
[**Note:** paragraph 3.1 of *MCG*]
- 2.10.5 G Where a *firm* reasonably suspects a *customer* has, or may have, some form of mental capacity limitation which would constrain the *customer's* ability to make a decision to borrow, the *firm* should not regard the *customer* as lacking capacity to make the decision unless the *firm* has taken reasonable steps without success to assist the *customer* to make a decision.
[**Note:** paragraph 3.2 of *MCG*]
- 2.10.6 G Amongst the most common potential causes of mental capacity limitations are the following examples, a mental health condition, dementia, a learning disability, a developmental disorder, a neurological disability or brain injury and alcohol or drug (including prescribed drugs) induced intoxication.
[**Note:** paragraph 2.9 of *MCG*]
- 2.10.7 G Where a *firm* understands or reasonably suspects a *customer* has a condition of a type in *CONC* 2.10.6G, this does not necessarily mean that the *customer* does not have the mental capacity to make an informed borrowing decision. See also *CONC* 2.10.15G.
[**Note:** paragraph 2.10 of *MCG*]

Indications that a person may have some form of mental capacity limitation

- 2.10.8 G A *firm* is likely to have reasonable grounds to suspect a *customer* may have some form of mental capacity limitation if the *firm* observes a specific indication (behavioural or otherwise) that could be indicative of some form of limitation of the *customer's* mental capacity. Examples (amongst others) of indications might include:

- (1) where a *firm* has an existing relationship with a *customer*, the *customer* making a decision that appears to the *firm* to be unexpected or out of character;
- (2) a *person* who is likely to have an informed view of the matter, such as a relative, close friend, carer or clinician raising a concern with the *firm* as to the capacity of the *customer* to make a decision about borrowing;
- (3) the *firm* understands or has reason to believe the *customer* has been diagnosed as having an impairment which led to the *customer* not having had mental capacity for similar decisions in the past;
- (4) the *firm* understands or has reason to believe the *customer* does not understand what the *customer* is applying for;
- (5) the *firm* understands or has reason to believe the *customer* is unable to understand the information and explanations provided by the *firm*, in particular concerning the key risks of entering into the agreement;
- (6) the *firm* understands or has reason to believe the *customer* is unable to retain information and explanations provided by the *firm* to enable the *customer* to make the decision to borrow;
- (7) the *firm* understands or has reason to believe the *customer* is unable to weigh up the information and explanations provided by the *firm* to enable the *customer* to make the decision to borrow;
- (8) the *customer* is unable to communicate a decision to borrow by any reasonable means;
- (9) the *customer* being confused about the personal information that the *firm* requires, such as date of birth or address.

[**Note:** paragraphs 3.14 and 3.15 of *MCG*]

Practices and procedures

- 2.10.9 G (1) A *firm* should not unfairly discriminate against a *customer* who it understands, or reasonably suspects, has a mental capacity limitation, in particular, by inappropriately denying the *customer* access to *credit*. [**Note:** paragraph 4.8 of *MCG*]
- (2) It would not be inappropriate not to grant *credit* nor significantly increase the amount of *credit* under an agreement nor set a *credit limit* for running account *credit* where the *firm* reasonably believes the agreement or decision would be voidable at the instance of the *customer* or the agreement is void.
- 2.10.10 G (1) In accordance with *Principle 6*, *firms* should take reasonable steps to ensure they have suitable business practices and procedures in place

for the fair treatment of *customers* who they understand, or reasonably suspect, have or may have a mental capacity limitation.
 [Note: paragraph 4.1 of *MCG*]

- (2) *CONC 7.2.1R* require *firms* to establish and implement arrears policies and procedures, which include policies and procedures for the fair and appropriate treatment of *customers* the *firm* understands or reasonably suspects of having mental capacity limitations.

2.10.11 G A *firm* should document practices and procedures to set out the steps that it takes when it receives applications for *credit* from such *customers*.

[Note: paragraph 4.2 of *MCG*]

2.10.12 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation the *firm* should use its business practices and procedures to:

- (1) assist the *customer*, where possible, to make an informed borrowing decision; and
- (2) ensure its lending decision is informed and responsible in the circumstances and mitigates the potential risks to the *customer*.

[Note: paragraphs 4.3 and 4.5 of *MCG*]

2.10.13 G As stated in the Mental Capacity Act Code of Practice, it is important to balance a person's right to make a decision with that person's right to safety and protection when they are unable to make decisions to protect themselves.

[Note: paragraph 4.5 (box) of *MCG*]

2.10.14 G *Firms* should present clear, jargon-free information in explaining *credit agreements* in a way that makes it as easy as possible for the *customer* to understand. *Firms* should consider ways to present information in alternative, more 'user-friendly' formats where it appears appropriate to do so, subject to compliance with the relevant statutory requirements.

[Note: paragraph 4.20 of *MCG*]

2.10.15 G Where a *firm* knows, or reasonably suspects, that a *customer* has or may have one of the conditions in *CONC 2.10.6G* this could justifiably act as a trigger for the *firm* to consider the potential specific steps in giving effect to the *firm's* practices and procedures for assessing:

- (1) whether or not the *customer* appears able to understand, remember, and weigh up the information and explanations provided and, when having done so, make an informed borrowing decision;
- (2) whether the *customer* appears able to afford to make *repayments* under the *credit agreement* in a *sustainable* manner without adverse consequences to the *customer's* financial circumstances; and

- (3) whether the *credit* the *customer* is seeking is clearly unsuitable (given the *customer's* individual circumstances and, to the extent that the *firm* is aware, the *customer's* intended use of the *credit*).

[Note: paragraphs 2.5 and 2.11 of *MCG*]

- 2.10.16 G *Firms'* practices and procedures should be designed to assist *customers* that *firms* understand have, or reasonably suspect of having, mental capacity limitations to overcome, to the extent possible, the effect of the limitations and place them, to the extent possible, on an equivalent basis to *customers* who do not have such limitations, to increase the likelihood of *customers* being able to make informed borrowing decisions.

[Note: paragraph 4.4 of *MCG*]

Allowing sufficient time for decisions

- 2.10.17 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation it should consider allowing the *customer*:
- (1) sufficient time in the circumstances to weigh up the information and explanations the *firm* has given;
 - (2) sufficient time in the circumstances to make an informed borrowing decision;
 - (3) to defer a decision to borrow to a later date.

[Note: paragraphs 4.26, 4.27 and 4.28 of *MCG*]

Sustainability of borrowing

- 2.10.18 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation it should apply a high level of scrutiny to the *customer's* application for *credit*, in order to mitigate the risk of the *customer* entering into *unsustainable* borrowing (see *CONC* 5.2 and 5.3).

[Note: paragraphs 4.32 and 4.33 of *MCG*]

- 2.10.19 G
- (1) A *firm* should balance the risk of a *customer* taking on *unsustainable* borrowing against inappropriately or unnecessarily denying *credit* to a *customer*.
 - (2) Where a *firm* understands or reasonably suspects a *customer* has or may have a mental capacity limitation, it should undertake an appropriate and effective *creditworthiness assessment* or assessment required by *CONC* 5.2.2R(1) and it would be appropriate not to place over-reliance on information provided by the *customer* for the assessment.

[Note: paragraph 4.34 of *MCG*]

- 2.10.20 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation the *firm* should take particular care that the *customer* is not provided with *credit* which the *firm* knows, or reasonably believes, to be unsuitable to the *customer's* needs, even where the *credit* would be affordable.

[Note: paragraph 4.43 of *MCG*]

2 Annex 1R Distance marketing information

This Annex belongs to *CONC 2.7.2R* (The distance marketing disclosure rules)

Information about the firm	
(1)	The name and the main business of the <i>firm</i> , the geographical address at which it is established and any other geographical address relevant for the <i>consumer's</i> relations with the <i>firm</i> .
(2)	Where the <i>firm</i> has a representative established in the <i>consumer's</i> EEA State of residence, the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
(3)	Where the <i>consumer's</i> dealings are with any professional other than the <i>firm</i> , the identity of that professional, the capacity in which he is acting with respect to the <i>consumer</i> , and the geographical address relevant to the <i>consumer's</i> relations with that professional.
(4)	The particulars of the public register in which the <i>firm</i> is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (<i>GEN 4</i>), a statement that the <i>firm</i> is on the <i>Financial Services Register</i> and its firm reference number.
Information about the financial service	
(5)	A description of the main characteristics of the service the <i>firm</i> will provide.
(6)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all related fees, charges and expenses, and all taxes paid through the <i>firm</i> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(7)	Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the <i>firm's</i> control and that past performance is no indicator of future performance.
(8)	Notice of the possibility that other taxes or costs may exist that are not paid

	via the <i>firm</i> or imposed by it.
(9)	Any limitations on the period for which the information provided is valid, including a clear explanation as to how long the <i>firm's</i> offer applies as it stands.
(10)	The arrangements for payment and performance.
(11)	Details of any specific additional cost to the <i>consumer</i> for using a means of distance communication.
Information about the contract	
(12)	The existence or absence of any right to cancel under section 66A or 67 of the CCA or the cancellation <i>rules</i> in CONC 11.1 and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) in accordance with those <i>rules</i> , as well as the consequences of not exercising the right to cancel.
(13)	The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
(14)	Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
(15)	Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
(16)	The <i>EEA State</i> or <i>States</i> whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
(17)	Any contractual clause on the law applicable to the contract or on the competent court, or both.
(18)	In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied and in which language, or languages, the <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.
Information about redress	
(19)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> and, if so, the methods for having access to that body, together with equivalent information about any other applicable named complaints scheme.
(20)	Whether compensation may be available from the <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its

	liabilities.
[Note: Recitals 21 and 23 to, and article 3(1) of, the <i>Distance Marketing Directive</i>]	

2 Annex **Abbreviated distance marketing information**

2R

This Annex belongs to *CONC 2.7.11R*.

(1)	The identity of the <i>person</i> in contact with the <i>consumer</i> and his link with the <i>firm</i> .
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all taxes paid via the <i>firm</i> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(4)	Notice of the possibility that other taxes and/or costs may exist that are not paid via the <i>firm</i> or imposed by the <i>firm</i> .
(5)	The existence or absence of a right to cancel in accordance with the cancellation provisions or <i>rules</i> (in sections 66A or 67 of the <i>CCA</i> or in <i>CONC 11.1</i>) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the <i>consumer</i> may be required to pay on the basis of the cancellation rules.
(6)	That other information is available on request and the nature of that information
[Note: article 3(3)(b) of the <i>Distance Marketing Directive</i>]	

3 **Financial promotions and communications with customers**

3.1 **Application**

Who? What?

- 3.1.1 R This chapter, unless a *rule* in *CONC 3* specifies differently, applies to a *firm*.
- 3.1.2 G Under section 39(3) of the *Act*, a *firm* is responsible for *financial promotions communicated* by its *appointed representatives* when acting as such.
- 3.1.3 R This chapter, unless a *rule* in *CONC 3* specifies differently, applies to:
- (1) a communication with a *customer* in relation to a *credit agreement*;

- (2) the *communication* or *approval for communication* of a *financial promotion* in relation to a *credit agreement*;
 - (3) a communication with a *customer* in relation to *credit broking*;
 - (4) the *communication* or *approval for communication* of a *financial promotion* in relation to *credit broking*;
 - (5) a communication with a *borrower* or a prospective *borrower* in relation to *operating an electronic system in relation to lending*; and
 - (6) the *communication* or *approval for communication* of a *financial promotion* to a *borrower* or a prospective *borrower* in relation to *operating an electronic system in relation to lending*.
- 3.1.4 R The clear fair and not misleading *rule* in CONC 3.3.1R and the general requirements *rule* in CONC 3.3.2R and the *guidance* in CONC 3.3.5G to 3.3.11G also, unless a *rule* or *guidance* in those paragraphs specifies differently, apply to:
- (1) a communication with a *customer* in relation to *debt counselling* or *debt adjusting*; and
 - (2) the *communication* or *approval for communication* of a *financial promotion* in relation to *debt counselling* or *debt adjusting*.
- 3.1.5 R CONC 3.3.1R also applies to:
- (1) a communication with a *customer* in relation to a *consumer hire agreement*;
 - (2) the *communication* or *approval for communication* of a *financial promotion* in relation to a *consumer hire agreement*; and
 - (3) a communication with a *customer* in relation to *providing credit information services*.
- 3.1.6 R CONC 3 does not apply to:
- (1) a *financial promotion* or a communication which expressly or by implication indicates clearly that it is solely promoting *credit agreements* or *consumer hire agreements* or *P2P agreements* for the purposes in each case of a *customer's* business;
 - (2) a *financial promotion* or a communication to the extent that it relates to *qualifying credit*; or
 - (3) an *excluded communication*.
- 3.1.7 R (1) CONC 3 does not apply (apart from the provisions in (2)) to a *financial promotion* or communication that consists of only one or

more of the following:

- (a) the name of the *firm* (or its *appointed representative*);
 - (b) a logo;
 - (c) a contact point (address (including e-mail address), telephone, facsimile number and website address);
 - (d) a brief, factual description of the type of product or service provided by the *firm*.
- (2) The provisions in *CONC* 3 which apply to a *financial promotion* or communication which falls within (1) are:
- (a) *CONC* 3.1, 3.5.1R and 3.6.1R (application);
 - (b) *CONC* 3.3.1R (clear, fair and not misleading);
 - (c) *CONC* 3.3.3R (credit regardless of status);
 - (d) *CONC* 3.5.3R, 3.5.5R, 3.6.6R (requirement for representative example or typical APR etc);
 - (e) *CONC* 3.5.7R (other financial promotions requiring a representative APR);
 - (f) *CONC* 3.5.12R (restricted expressions) and 3.6.8R (restricted expressions); and
 - (g) any other *rules* in *CONC* which are necessary or expedient to apply the rules in (a) to (f).

- 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. 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.

Where?

- 3.1.9 R This chapter applies to a *firm* in relation to:
- (1) a communication with, or the *communication* or *approval* for *communication* of a *financial promotion* to, a person in the UK;
 - (2) the *communication* of an *unsolicited real time financial promotion*, unless it is made from a place, and for the purposes of a business

which is only carried on, outside the *UK*; and

- (3) the *communication* or *approval* for *communication* of a *financial promotion* that is an *electronic commerce communication* to a person in an *EEA State* other than in the *UK*;

and for the purposes of the application of this chapter, it is immaterial whether the *credit agreement* or the *consumer hire agreement* to which the *financial promotion* or communication relates is subject to the law of a country outside the *UK*.

3.2 Financial promotion general guidance

- 3.2.1 G The *rules* in this chapter adopt various concepts from the restriction on financial promotions by *unauthorised persons* in section 21(1) of the *Act* (Restrictions on financial promotion). *Guidance* on that restriction and the communications which are exempt from it is contained in *PERG* 8 (Financial promotion and related activities) and that *guidance* will be relevant to interpreting these *rules*. In particular, *guidance* on the meaning of:
- (1) 'communicate' is in *PERG* 8.6 (Communicate); and
- (2) 'invitation or inducement' and 'engage in investment activity' (two elements which, with 'communicate', make up the definition of 'financial promotion') is in *PERG* 8.4 (Invitation or inducement).
- 3.2.2 G The Privacy and Electronic Communications (EC Directive) Regulations 2003 apply to unsolicited telephone calls, fax messages and electronic mail messages for direct marketing purposes. The Information Commissioner's Office has produced guidance on the Regulations.

3.3 The clear fair and not misleading rule and general requirements

- 3.3.1 R (1) A *firm* must ensure that a communication or a *financial promotion* is clear, fair, and not misleading.
- [**Note:** paragraphs 2.2 of *ILG*, 3.16 of *DMG* and 3.1 of *CBG*]
- (2) If, for a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with (1), a contravention does not give rise to a right of action under section 138D of the *Act*.

General requirements

- 3.3.2 R A *firm* must ensure that a communication or a *financial promotion*:
- (1) uses plain and intelligible language;

- (2) is easily legible (or, in the case of any information given orally, clearly audible);
- (3) specifies the name of the *person* making the communication or *communicating* the *financial promotion* or the *person* on whose behalf the *financial promotion* is made; and
- (4) in the case of a communication or *financial promotion* in relation to *credit broking*, indicates to the *customer* the identity of the *lender* (where it is known).

[**Note:** paragraph 4.8a of *CBG*]

[**Note:** regulation 3 of *CCAR 2004* and regulation 3 of *CCAR 2010*]

- 3.3.3 R A *firm* must not in a *financial promotion* or a communication to a *customer* suggest or state, expressly or by implication, that *credit* is available regardless of the *customer's* financial circumstances or status.

[**Note:** paragraphs 3.7o of *CBG* and 5.2 of *ILG*]

- 3.3.4 G (1) A *firm's* trading name, internet address or logo, in particular, could fall within *CONC* 3.3.3R.

[**Note:** paragraph 5.2 (box) of *ILG*]

- (2) If *credit* is described as pre-approved, in accordance with *CONC* 3.5.12R the provision of the *credit* should be free of any conditions regarding the *customer's* credit status, and the *lender* or, in relation to a *P2P agreement* the *operator of an electronic system in relation to lending*, should have carried out the required assessment under *CONC* 5.

Guidance on clear, fair and not misleading

- 3.3.5 G A *firm* should ensure that each communication and each *financial promotion*:

- (1) is accurate and, in particular, should not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;
- (2) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;
- (3) does not disguise, diminish or obscure important information, statements or warnings; and
- (4) is clearly identifiable as such.

[**Note:** in relation to identifying marketing material as such, paragraphs 3.7p of *CBG* and 3.18q of *DMG*]

- 3.3.6 G If a communication or a *financial promotion* names the *FCA*, *PRA* or both as the regulator of a *firm* and refers to matters not regulated by the *FCA*, *PRA* or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FCA*, *PRA* or both.
- 3.3.7 G When *communicating* information, a *firm* should consider whether omission of any relevant fact will result in information given to the *customer* being insufficient, unclear, unfair or misleading.
- 3.3.8 G If a communication or a *financial promotion* compares a product or service with one or more other products (whether or not provided by the *firm*), the *firm* should ensure that the comparison is meaningful and presented in a fair and balanced way.
- 3.3.9 G A *firm* should in a *financial promotion* or other communication which includes a premium rate telephone number indicate in a prominent way the likely total cost of a premium rate call including the price per minute of a call, the likely duration of calls and the total cost a *customer* would incur if the *customer* calls for the full estimated duration.
- [Note: paragraphs 3.9h of *CBG* and 3.18x (box) of *DMG*]

Unfair business practices: financial promotions and communications

- 3.3.10 G Examples of practices that are likely to contravene the clear, fair and not misleading *rule* in *CONC* 3.3.1R include:
- (1) stating or implying that a *firm* is a *lender* (where this is not the case);
[Note: paragraph 3.7e (box) of *CBG*]
 - (2) misleading a *customer* as to the availability of a particular *credit* product;
[Note: paragraph 3.9p of *CBG*]
 - (3) concealing or misrepresenting the identity or name of the *firm*;
[Note: paragraph 3.7g (box) of *CBG*]
 - (4) using false testimonials, endorsements or case studies;
[Note: paragraph 3.18s of *DMG*]
 - (5) using false or unsubstantiated claims as to the *firm's* size or experience or pre-eminence;
[Note: paragraph 3.18t of *DMG*]
 - (6) in relation to *debt solutions*, claiming or implying that a *customer* will be free of debt in a specified period of time or making statements emphasising a debt-free life or that a *debt solution* is a stress free or immediate solution;

[Note: paragraphs 3.18u and 3.18v of *DMG*]

- (7) providing online tools, which recommend a particular *debt solution* as suitable for a *customer*, such as, budget calculators or advice websites:
- (a) which do not carry out a sufficiently full assessment of a *customer's* financial position; or
 - (b) which fail to provide clear warnings to a *customer* that financial data entered into a tool has to be accurate;

[Note: paragraph 3.20c of *DMG*]

- (8) emphasising any savings available to a *customer* by proposing to reschedule a *customer's* debts, without explaining that a *lender* is not obliged to accept less in settlement of the *customer's* debts than it is entitled to, nor to freeze interest and charges and that the result may be to increase the *total amount payable* or the period over which it is to be paid and to impair the *customer's* credit rating;

[Note: paragraph 3.18l of *DMG*]

- (9) suggesting that a *customer's repayments* will be lower under a proposed agreement without also mentioning (where applicable) that the duration of the agreement will be longer or that the *total amount payable* will be higher.

[Note: paragraph 5.13 of *ILG*]

Guidance on misleading introductions

- 3.3.11 G Misleading a *customer* as to the availability of a particular credit product is likely to include stating or implying that the *firm* will introduce the *customer* to a provider of a standard personal loan based on repayment by instalments or of an overdraft facility on a current account (for example, a bank or building society) or of a credit card, but instead introducing the *customer* to a provider of *high-cost short-term credit*.

[Note: paragraph 3.9p (box) of *CBG*]

3.4 Risk warning for high-cost short-term credit

Risk warnings

- 3.4.1 R (1) A *firm* must not *communicate* or *approve for communication* a *financial promotion* in relation to *high-cost short-term credit*, unless it contains the following risk warning:

“Warning: Late repayment can cause you serious money problems. For help, go to moneyadvice.service.org.uk”.

- (2) The risk warning in (1) must be included in a *financial promotion* contained in an *electronic communication* unless by reason of the limited space available on the medium in question it is not reasonably practicable to include the warning.
- (3) Instead of the website address in paragraph (1), a *firm* may include the Money Advice Service's logo registered community trade mark number EU009695909.
- (4) The risk warning must be included in a *financial promotion* in a prominent way.

3.4.2 G The Money Advice Service has granted a licence to use the logo referred to in *CONC 3.4.1R(3)* for the purposes of that rule. The terms of the licence are available from the Money Advice Service.

3.5 Financial promotions about credit agreements not secured on land

Application

3.5.1 R This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending*;
- (2) to a *financial promotion* in relation to *credit broking* in relation to *regulated credit agreements*;
- (3) to a *financial promotion* in relation to activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to what would be *regulated credit agreements* but for a *relevant provision*, but only where the *firm* also carries on such activities in relation to *regulated credit agreements*;

and in each case, other than to *financial promotions* to the extent that they relate to agreements secured on *land*.

Prohibition on financial promotion where goods etc. not sold for cash

3.5.2 R A *financial promotion* must not be *communicated* where it indicates a *firm* is willing to provide *credit* under a regulated *restricted-use credit agreement* relating to *goods* or services to be supplied by any *person*, when at the time the *financial promotion* is *communicated*, the *firm* or any *supplier* under such an agreement does not hold itself out as prepared to sell the *goods* or provide the services (as the case may be) for cash.

[**Note:** section 45 of *CCA*]

Content of financial promotions

3.5.3 R (1) Where a *financial promotion* includes a rate of interest or an amount

relating to the *cost of credit* whether expressed as a sum of money or a proportion of a specified amount, the *financial promotion* must also:

- (a) include a representative example in accordance with *CONC 3.5.5R*, and
- (b) specify a postal address at which the *person* making the *financial promotion* may be contacted.

[**Note:** regulation 4(1) of *CCAR 2010*]

(2) Paragraph (1)(a) does not apply where the *financial promotion*:

- (a) falls within *CONC 3.5.7R*; and
- (b) does not indicate a rate of interest or an amount relating to the *cost of credit* other than the *representative APR*.

[**Note:** regulation 4(2) of *CCAR 2010*]

(3) Paragraph (1)(b) does not apply to *financial promotions*:

- (a) communicated by means of television or radio broadcast; or
- (b) in any form on the premises of a *dealer* or *lender*, other than *financial promotions* in writing which *customers* are intended to take away; or
- (c) which include the name and address of a *dealer*; or
- (d) which include the name and postal address of a *credit broker*.

[**Note:** regulation 4(1)b of *CCAR 2010*]

Guidance on showing interest rates and cost of credit

- 3.5.4 G A rate of interest for the purpose of *CONC 3.5.3R(1)* is not limited to an annual rate of interest but would include a *monthly* or daily rate or an *APR*. It would also include reference to 0% credit. An amount relating to the *cost of credit* would include the amount of any fee or charge, or any *repayment of credit* (where it includes interest or other charges).

[**Note:** paragraph 6.7 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

Representative example

- 3.5.5 R (1) The representative example in *CONC 3.5.3R(1)* must comprise the following items of information:
- (a) the rate of interest, and whether it is fixed or variable or both, expressed as a fixed or variable percentage applied on an

annual basis to the amount of *credit* drawn down;

- (b) the nature and amount of any other charge included in the *total charge for credit*;
- (c) the *total amount of credit*;
- (d) the *representative APR*;
- (e) in the case of *credit* in the form of a deferred payment for specific *goods*, services, *land* or other things, the *cash price* and the amount of any *advance payment*;
- (f) the duration of the agreement;
- (g) the *total amount payable*; and
- (h) the amount of each *repayment of credit*.

[**Note:** regulation 5(1) of *CCAR 2010*]

[**Note:** article 4 of the *Consumer Credit Directive*]

- (2) The items of information required by (1)(a), (b), (c), (e), (f) and (g) must be those which the *firm communicating or approving the financial promotion* reasonably expects at the date on which the *financial promotion* is made to be representative of *credit agreements* to which the *representative APR* applies and which are expected to be entered into as a result of the promotion.

[**Note:** regulation 5(2) of *CCAR 2010*]

- (3) For (1)(e), the reference in (2) to “*credit agreements* to which the *representative APR* applies” is to agreements providing *credit* for the purchase of specific *goods*, services, *land* or other things, to which the *representative APR* applies.

[**Note:** regulation 5(3) of *CCAR 2010*]

- (4) For the purposes of (1)(a), where the *credit agreement* provides for different ways of drawdown with different rates of interest, the rate of interest shall be assumed to be the highest rate applied to the most common drawdown mechanism for the product to which the agreement relates.

[**Note:** regulation 5(4) of *CCAR 2010*]

- (5) The information required by (1) must be:
 - (a) specified in a clear and concise way;
 - (b) accompanied by the words “representative example”;
 - (c) presented together with each item of information being given

equal prominence; and

- (d) given greater prominence than:
- (i) any other information relating to the *cost of credit* in the *financial promotion*, except for any statement relating to an obligation to enter into a contract for an *ancillary service* referred to in *CONC 3.5.10R*; and
 - (ii) any indication or incentive of a kind referred to in *CONC 3.5.7R*.

[**Note:** regulation 5(6) of *CCAR 2010*]

- (6) A *financial promotion* for a *credit agreement* with no fixed duration is not required to include the duration of the agreement or the *total amount payable* or the amount of each *repayment of credit*.

[**Note:** regulation 5(1)f of *CCAR 2010*]

- (7) A *financial promotion* for an *authorised non-business overdraft agreement* is not required to include a *representative APR*.

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

Guidance on the representative example

- 3.5.6 G (1) The representative example in *CONC 3.5.5R* should not be limited to being representative of agreements featured in the *financial promotion* if the *firm communicating or approving the financial promotion* expects other agreements to be entered into as a result of the *financial promotion*, whether with the *firm* or with a third party.
- [**Note:** paragraph 6.8 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]
- (2) Where the agreement provides for compounding, the rate of interest in *CONC 3.5.5R(1)* should generally be the effective annual interest rate and *lenders* should use the same assumptions to calculate this interest rate as they do for the *APR*; the assumptions set out in *CONC App 1.2*. If a *firm* uses a different rate to calculate the rate of interest in *CONC 3.5.5R(1)* it must clearly explain this to the *customer*, so that the *customer* is clear whether and to what extent the rate used is comparable with rates shown by other *lenders*.
- [**Note:** paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]
- (3) If a rate of interest or a charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown.
- [**Note:** paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (4) For charges other than interest which are included in the *total charge for credit*, the *financial promotion* should in each case make clear the nature of the charge and the amount of the charge if ascertainable or a reasonable estimate of the charge, making clear in that case it is an estimate.

[**Note:** paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

- (5) The *total amount of credit* equates to the sum available to the *customer* to use and does not include charges which are financed by the *credit agreement*; those are part of the *total charge for credit*.
- (6) For showing the *cash price*, the total *cash price* of all items should be shown, together with the price of each item individually.

Other financial promotions requiring a representative APR

- 3.5.7 R (1) A *financial promotion* must include the *representative APR* if it:
- (a) indicates in any way, including by means of the name given to the business or the product or of an address used by a business for the purposes of electronic communication, that:
- (i) *credit* is available to persons who might otherwise consider their access to *credit* restricted; or
- (ii) any of the terms on which *credit* is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other *lenders*; or
- (iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other *lenders*; or
- [**Note:** regulation 6 of *CCAR 2010*]
- (b) includes an incentive (including but not limited to gifts, special offers, discounts and rewards) to apply for *credit* or to enter into an agreement under which *credit* is provided;
- (c) includes an incentive (in the form of a statement about the speed or ease of processing, considering or granting an application, or of making funds available) to apply for *credit* or to enter into an agreement under which *credit* is provided.
- (2) The *representative APR* must be given greater prominence than any indication or incentive in (1).

- (3) This *rule* does not apply to a *financial promotion* for an *authorised non-business overdraft agreement*.

- 3.5.8 G Whether or not a reference to speed or ease in *CONC 3.5.7R(1)(c)* constitutes an incentive to apply for *credit* or enter into an agreement under which *credit* is provided would depend upon the circumstances, including whether it is likely to persuade or influence a *customer* to take those steps or is merely a factual statement about the product or service.

Annual percentage rate of charge

- 3.5.9 R In a *financial promotion*:
- (1) an *APR* must be shown as “%APR”;
 - (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”.

[**Note:** regulation 7 of *CCAR 2010*]

Ancillary services

- 3.5.10 R (1) A *financial promotion* must include a clear and concise statement in respect of any obligation to enter into a contract for an *ancillary service* where:
- (a) the conclusion of that contract is compulsory in order to obtain the *credit* or to obtain it on the terms and conditions promoted; and
 - (b) the cost of that *ancillary service* cannot be determined in advance.

[**Note:** regulation 8 of *CCAR 2010*]

- (2) The statement in (1) must:
- (a) be no less prominent than any information in *CONC 3.5.5R(1)* included in the *financial promotion*; and
 - (b) be presented together with any *representative APR* included in the *financial promotion*.
- (3) This *rule* does not apply to a *financial promotion* for an *authorised non-business overdraft agreement*.

Security

- 3.5.11 R Where a *financial promotion* concerns a facility for which *security* is or may

be required, the promotion must:

- (1) state that *security* is or may be required; and
- (2) specify the nature of the *security*.

[**Note:** regulation 9 of *CCAR 2010*]

Restricted expressions

- 3.5.12 R (1) A *financial promotion* must not include:
- (a) the word “overdraft” or any similar expression as describing any agreement for *running-account credit*, except where an agreement enables a *customer* to overdraw on a current account;
 - (b) the expression “interest free” or any similar expression indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by *credit* than he would be liable to pay as a cash purchaser for the like transaction, except where the *total amount payable* does not exceed the *cash price*;
 - (c) the expression “no deposit” or any similar expression, except where no *advance payments* are to be made;
 - (d) the expression “loan guaranteed”, “pre-approved” or “no credit checks” or any similar expression, except where the agreement is free of any conditions regarding the credit status of the *customer*; or
 - (e) the expression “gift”, “present” or any similar expression, except where there are no conditions which would require the *customer* to repay the *credit* or to return the item that is the subject of the claim.

[**Note:** regulation 10 of *CCAR 2010*]

- (2) A *financial promotion* must not include for a *repayment* of *credit* the expression “weekly equivalent” or any expression to like effect or any expression of any other periodical equivalent, unless weekly *repayments* or the other periodical payments are provided for under the agreement.
- (3) In this *rule*, “cash purchaser” means a person who, for money consideration, acquires *goods*, *land* or other things or is provided with services under a transaction which is not financed by *credit*.

Total charge for credit and APR

- 3.5.13 R (1) Where a *financial promotion* is about *running-account credit* and the

credit limit applicable is not yet known on the date the *financial promotion* is made, but it is known that it will be less than £1,200, the *credit limit* must be assumed to be an amount equal to that maximum limit.

[**Note:** paragraph 1 of schedule to *CCAR 2010*]

- (2) The assumption in (1) applies in place of the assumption in *CONC* App 1.2.5R for the purpose of calculating the *total charge for credit*.

Total charge for credit and APR: tolerances for APR

- (3) For a *financial promotion*, it is sufficient to show an *APR* if there is included in the promotion:
- (a) a rate which exceeds the *APR* by not more than one; or
 - (b) a rate which falls short of the *APR* by not more than 0.1; or
 - (c) where applicable, a rate determined in accordance with (4) or (5).

[**Note:** paragraph 2 of schedule to *CCAR 2010*]

Total charge for credit and APR: tolerance where repayments are nearly equal

- (4) Where an agreement under which all *repayments* but one are equal and that one *repayment* does not differ from any other *repayment* by more whole pence than there are *repayments of credit*, there may be included in a *financial promotion* about the agreement a rate found under *CONC* App 1.2.4R as if that one *repayment* were equal to the other *repayments* to be made under the agreement.

[**Note:** paragraph 3 of schedule to *CCAR 2010*]

Total charge for credit and APR: tolerance regarding interval between relevant date and first repayment

- (5) Where a *credit agreement* provides that:
- (a) three or more *repayments* are to be made at equal intervals; and
 - (b) the interval between the relevant date and the first *repayment* is greater than the interval between the *repayments*;

a *financial promotion* about the agreement may include a rate found under *CONC* App 1.2.4R as if the interval between the relevant date and the first *repayment* were shortened so as to be equal to the interval between the *repayments*.

[**Note:** paragraph 4 of schedule to *CCAR 2010*]

- (6) The relevant date in (5) is:
- (a) where a date on which the *customer* is entitled to require provision of the subject of a *credit agreement* is specified in or can be determined from the agreement, the earliest such date;
 - (b) in any other case, the date of making the agreement.

3.6 Financial promotions about credit agreements secured on land

Application

- 3.6.1 R This section applies:
- (1) to a *financial promotion* in relation to *consumer credit lending* in relation to *regulated credit agreements* secured on *land*; and
 - (2) to a *financial promotion* in relation to *credit broking* in relation to *regulated credit agreements* secured on *land*;

and in both cases other than *financial promotions* to the extent that they relate to *qualifying credit*.

Definitions

- 3.6.2 R In this section, for a *financial promotion* relating to *credit* to be provided under a *credit agreement* “relevant date” means:
- (1) in a case where a date is specified in or determinable under the agreement at the date of its making as that on which the *customer* is entitled to require provision of anything the subject of the agreement, the earliest such date; and
 - (2) in any other case, the date of the making of the agreement.

Prohibition on financial promotion where goods etc not sold for cash

- 3.6.3 R A *financial promotion* must not be *communicated* where it indicates a *firm* is willing to provide *credit* under a regulated *restricted-use credit agreement* secured on *land* relating to *goods* or services to be supplied by any *person*, when at the time the *financial promotion* is *communicated*, the *firm* or any *supplier* under such an agreement does not hold itself out as prepared to sell the *goods* or provide the services (as the case may be) for cash.

[Note: section 45 of CCA]

Content of financial promotions

- 3.6.4 R (1) Where a *financial promotion* includes any of the amounts referred to

in (5) to (7) of *CONC* 3.6.10R the promotion must:

- (a) include all the other items of information (other than any item inapplicable to the particular case) listed in *CONC* 3.6.10R; and
- (b) specify a postal address at which the *person* making the promotion may be contacted, except in the case of a *financial promotion*:
 - (i) *communicated* by means of television or radio broadcast;
 - (ii) in any form on the premises of a *lender* or *dealer* (other than a *financial promotion* in writing which *customers* are intended to take away);
 - (iii) which includes the name and address of a *dealer*; or
 - (iv) which includes the name and a postal address of a *credit broker*.

[**Note:** regulation 4(1) of *CCAR 2004*]

- (2) The items of information listed in *CONC* 3.6.10R must be given equal prominence and must be shown together as a whole.

[**Note:** regulation 4(2) of *CCAR 2004*]

- (3) Any information in any book, catalogue, leaflet or other document which is likely to vary from time to time must be taken for the purpose of (2) to be shown together as a whole if:

- (a) it is set out together as a whole in a separate document issued with the book, catalogue, leaflet or other document;
- (b) the other information in the *financial promotion* is shown together as a whole in the book, catalogue, leaflet or other document; and
- (c) the book, catalogue, leaflet or other document identifies the separate document in which the information likely to vary is set out.

[**Note:** regulation 4(3) of *CCAR 2004*]

Statements in relation to security

- 3.6.5 R (1) Where a *financial promotion* concerns a facility for which *security* is or may be required, the promotion must:
 - (a) state that *security* is or may be required; and

- (b) specify the nature of the *security*.
 [Note: regulation 7(1) of CCAR 2004]
- (2) Where, in the case of a *financial promotion*, the *security* comprises or may comprise a mortgage or charge on the *customer's* home:
- (a) except where (c) applies, the *financial promotion* must contain a warning in the form:
 “YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT”;
- (b) where the *financial promotion* indicates that *credit* is available for the payment of debts due to other *lenders*, the warning in (a) must be preceded by the words:
 “THINK CAREFULLY BEFORE SECURING OTHER DEBTS AGAINST YOUR HOME.”
- (c) where the *credit agreement* is or would be an agreement of a kind described in (3), the *financial promotion* must contain a warning in the form:
 “CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN ANY DOUBT, SEEK INDEPENDENT ADVICE”.
- [Note: regulation 7(2) of CCAR 2004]
- (3) The kinds of agreement in (2)(c) are:
- (a) any *credit agreement* under which no instalment *repayments* secured by the mortgage on the *customer's* home, and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by the *customer*), are due or capable of becoming due while the *customer* continues to occupy the mortgaged *land* as the *customer's* main residence; and
- (b) any *credit agreement*:
- (i) which is secured by a mortgage which the *lender* cannot enforce by taking possession of or selling (or concurring with any other *person* in selling) the mortgaged *land* or any part of it while the *customer* continues to occupy it as the *customer's* main residence; and
- (ii) under which, although interest payments may become due, no full or partial repayment of the *credit* secured

by the mortgage is due or capable of becoming due while the *customer* continues to occupy the mortgaged *land* as the *customer's* main residence.

[**Note:** regulation 7(3) of *CCAR 2004*]

- (4) Where a *financial promotion* is for a mortgage or other loan secured on property and *repayments* are to be made in a currency other than sterling, the *financial promotion* must contain a warning in the form: “CHANGES IN THE EXCHANGE RATE MAY INCREASE THE STERLING EQUIVALENT OF YOUR DEBT”.

[**Note:** regulation 7(4) of *CCAR 2004*]

- (5) The warnings provided for in (2) and (4):
- (a) must be given greater prominence in a *financial promotion* than is given to:
 - (i) any rate of charge other than the *typical APR*; and
 - (ii) any indication or incentive of a kind referred to in *CONC 3.6.6R(1)*; and
 - (b) must be given no less prominence in a *financial promotion* than is given to any of the items listed in *CONC 3.6.10R* that appear in the *financial promotion*.

[**Note:** regulation 7(6) of *CCAR 2004*]

- (6) Paragraphs (2), (3), (4) and (5) do not apply in the case of a *financial promotion* which:
- (a) is communicated by means of television or radio broadcast in the course of programming the primary purpose of which is not financial promotion; or
 - (b) is communicated by exhibition of a film (other than exhibition by television broadcast); or
 - (c) contains only the name of the *firm communicating* the *financial promotion*.

[**Note:** regulation 7(8) of *CCAR 2004*]

Annual percentage rate of charge

- 3.6.6 R (1) A *financial promotion* must specify the *typical APR* if the promotion:
- (a) specifies any other rate of charge;
 - (b) includes any of the items of information listed in *CONC 3.6.10R(5)* to (7);

- (c) indicates in any way, including by means of the name given to a business or of an address used by a business for the purposes of *electronic communication*, that:
- (i) *credit* is available to *persons* who might otherwise consider their access to *credit* restricted; or
 - (ii) any of the terms on which *credit* is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other *lenders*; or
 - (iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other *lenders*; or
- (d) includes any incentive (including but not limited to, gifts, special offers, discounts and rewards) to apply for *credit* or to enter into an agreement under which *credit* is provided;
[**Note:** regulation 8(1) of *CCAR 2004*]
- (e) includes an incentive (in the form of a statement about the speed or ease of, processing, considering or granting an application or of making funds available) to apply for *credit* or to enter into an agreement under which *credit* is provided.
- (2) A *financial promotion* may not indicate the range of *APRs* charged where *credit* is provided otherwise than by specifying, with equal prominence, both:
- (a) the *APR* which the *firm communicating or approving the financial promotion* reasonably expects, at the date on which the promotion is *communicated or approved*, would be the lowest *APR* at which *credit* would be provided under not less than 10% of the agreements which will be entered into as a result of that promotion; and
 - (b) the *APR* which the *firm communicating or approving the financial promotion* reasonably expects, at that date, would be the highest *APR* at which *credit* would be provided under any of the agreements which will be entered into as a result of that promotion.
[**Note:** regulation 8(2) of *CCAR 2004*]
- (3) An *APR* must be shown as “%*APR*”.
[**Note:** regulation 8(3) of *CCAR 2004*]
- (4) Where an *APR* is subject to change it must be accompanied by the

word “variable”.

[**Note:** regulation 8(4) of *CCAR 2004*]

- (5) The *typical APR* in a *financial promotion* must be:
- (a) accompanied by the word “typical”;
 - (b) presented together with any of the items listed in *CONC 3.6.10R* that are included in the promotion;
 - (c) given greater prominence in the promotion than:
 - (i) any other rate of charge;
 - (ii) any items listed in *CONC 3.6.10R*; and
 - (iii) any indication or incentive of a kind referred to in (1); and
 - (d) in the case of a promotion in printed or electronic form which includes any of the items listed in *CONC 3.6.10R*, shown in characters at least one and a half times the size of the characters in which those items appear.

[**Note:** regulation 8(5) of *CCAR 2004*]

- (6) In the case of a *financial promotion* relating to a *borrower-lender agreement* enabling the *customer* to overdraw on a current account under which the *lender* is the Bank of England or an *authorised* person with permission to accept deposits, there may be substituted for the *typical APR* a reference to the statement of:
- (a) a rate, expressed to be a rate of interest, being a rate determined as the rate of the *total charge for credit* calculated on the assumption that only interest is included in the *total charge for credit*, and
 - (b) the nature and amount of any other charge included in the *total charge for credit*.

[**Note:** regulation 8(6) of *CCAR 2004*]

- 3.6.7 G Whether or not a reference to speed or ease in *CONC 3.6.6R(1)(e)* constitutes an incentive to apply for *credit* or enter into an agreement under which *credit* is provided would depend upon the circumstances, including whether it is likely to persuade or influence a *customer* to take those steps or is merely a factual statement about the product or service.

Restricted expressions

- 3.6.8 R (1) A *financial promotion* must not include:

- (a) the word “overdraft” or any similar expression as describing any agreement for *running-account credit*, except where the agreement enables a *customer* to overdraw on a current account;
- (b) the expression “interest free” or any similar expression indicating that a *customer* is liable to pay no greater amount in respect of a transaction financed by *credit* than he would be liable to pay as a cash purchaser for the like transaction, except where the *total amount payable* by the *customer* does not exceed the *cash price*;
- (c) the expression “no deposit” or any similar expression, except where no *advance payments* are to be made;
- (d) the expression “loan guaranteed” or “pre-approved” or “no credit checks” or any similar expression, except where the agreement is free of any conditions regarding the credit status of the *customer*;
- (e) the expression “gift”, “present” or any similar expression, except where there are no conditions which would require the *customer* to repay the *credit* or return the item that is the subject of the claim.

[**Note:** regulation 9 of *CCAR 2004*]

- (2) A *financial promotion* must not include for a *repayment* of *credit* the expression “weekly equivalent” or any expression to like effect or any expression of any other periodical equivalent, unless weekly repayments or the other periodical payments are provided for under the agreement.
- (3) In this *rule* “cash purchaser” means a person who for money consideration acquires *goods, land* or other things or is provided with services, under a transaction which is not financed by *credit*.

Total charge for credit and any APR: assumptions about running account credit

- 3.6.9 R (1) In the case of a *financial promotion* about *running-account credit*, the following assumptions have effect for the purpose of calculating the *total charge for credit* and any *APR*, notwithstanding the terms of the transaction advertised and in place of any assumptions in *CONC App 1.1.11R* to *1.1.18R* that might otherwise apply:
- (a) the amount of the *credit* to be provided must be taken to be £1,500 or, in a case where *credit* is to be provided subject to a *credit limit* of less than £1,500, an amount equal to that limit;
 - (b) it must be assumed that the *credit* is provided for a period of one year beginning with the relevant date;

- (c) it must be assumed that the *credit* is provided in full on the relevant date;
- (d) where the rate of interest will change at a time provided in the transaction within a period of three years beginning with the relevant date, the rate must be taken to be the highest rate at any time obtaining under the transaction in that period;
- (e) where the agreement provides *credit* to finance the purchase of *goods*, services, *land* or other things and also provides one or more of:
 - (i) *cash loans*;
 - (ii) *credit* to refinance existing indebtedness of the *customer*, whether to the *lender* or another *person*; and
 - (iii) *credit* for any other purpose;

and either or both different rates of interest and different charges are payable for the *credit* provided for all or some of these purposes, it must be assumed that the rate of interest and charges payable for the whole of the *credit* are those applicable to the provision of *credit* for the purchase of *goods*, services, *land* or other things; and

- (f) it must be assumed that the *credit* is repaid:
 - (i) in twelve equal instalments; and
 - (ii) at *monthly* intervals, beginning one *month* after the relevant date.

[**Note:** paragraph 1 of schedule 1 to *CCAR 2004*]

Total charge for credit and any APR: tolerances in disclosure of an APR

- (2) For the purposes of *CONC 3.6*, it is sufficient compliance with the requirement to show an *APR* if there is included in the *financial promotion*:
 - (a) a rate which exceeds the *APR* by not more than one; or
 - (b) a rate which falls short of the *APR* by not more than 0.1;

or in a case to which (3) or (4) applies, a rate determined in accordance with those sub-paragraphs or whichever of them applies to that case.

[**Note:** paragraph 2 of schedule 1 to *CCAR 2004*]

Total charge for credit and any APR: tolerance where repayments are nearly

equal

- (3) In the case of an agreement under which all *repayments* but one are equal and that one *repayment* does not differ from any other *repayment* by more whole pence than there are *repayments* of *credit*, there may be included in a *financial promotion* about the agreement a rate found under *CONC* App 1.1.9R as if that one *repayment* were equal to the other *repayments* to be made under the agreement.

[**Note:** paragraph 3 of schedule 1 to *CCAR 2004*]

Total charge for credit and any APR: tolerance of interval between relevant date and first repayment

- (4) In the case of an agreement under which:
- (a) three or more *repayments* are to be made at equal intervals; and
- (b) the interval between the relevant date and the first *repayment* is greater than the interval between the *repayments*;

a *financial promotion* about the agreement may include a rate found under *CONC* App 1.1.9R as if the interval between the relevant date and the first *repayment* were shortened so as to be equal to the interval between *repayments*.

[**Note:** paragraph 4 of schedule 1 to *CCAR 2004*]

Information required in a financial promotion

- 3.6.10 R (1) The amount of *credit* which may be provided under a *credit agreement* or an indication of one or both of the maximum amount and the minimum amount of *credit* which may be provided.

[**Note:** paragraph 1 of schedule 2 to *CCAR 2004*]

Deposit of money in an account

- (2) A statement of any requirement to place on deposit any sum of money in any account with any *person*.

[**Note:** paragraph 2 of schedule 2 to *CCAR 2004*]

Cash price

- (3) In the case of a *financial promotion* about *credit* to be provided under a *borrower-lender-supplier agreement*, where the *financial promotion* specifies *goods*, services, *land* or other things having a particular *cash price*, the acquisition of which from an identified *dealer* may be financed by the *credit*, the *cash price* of such *goods*, services, *land* or other things.

[**Note:** paragraph 3 of schedule 2 to *CCAR 2004*]

Advance payment

- (4) A statement as to whether an *advance payment* is required and, if so, the amount or minimum amount of the payment expressed as a sum of money or a percentage.

[Note: paragraph 4 of schedule 2 to *CCAR 2004*]

Frequency, number and amount of repayments of credit

- (5) (a) In the case of a *financial promotion* about *running-account credit*, a statement of the frequency of the *repayments of credit* under the transaction and of the amount of each *repayment* stating whether it is a fixed or minimum amount, or a statement indicating the manner in which the amount will be determined.
- (b) In the case of other *financial promotions*, a statement of the frequency, number and amounts of *repayments of credit*.
- (c) The amount of any *repayment* under this sub-paragraph may be expressed as a sum of money or as a specified proportion of a specified amount (including the amount outstanding from time to time).

[Note: paragraph 5 of schedule 2 to *CCAR 2004*]

Other payments and charges

- (6) (a) Subject to (b) and (c), a statement indicating the description and amount of any other payments and charges which may be payable under the agreement promoted in the *financial promotion*.
- (b) Where the liability of the *customer* to make any payment cannot be ascertained at the date the *financial promotion* is *communicated*, a statement indicating the description of the payment in question and the circumstances in which the liability to make it will arise.
- (c) Paragraphs (a) and (b) do not apply to any charge payable under the transaction to the *lender* or any other *person* on behalf of the *lender* upon failure by the *customer* or a relative of the *customer* to do or refrain from doing anything which the *customer* is required to do or refrain from doing, as the case may be.

[Note: paragraph 6 of schedule 2 to *CCAR 2004*]

Total amount payable by the customer

- (7) In the case of a *financial promotion* about *fixed-sum credit* to be provided under a *credit agreement* which is repayable at specified

intervals or in specified amounts and other than cases under which the sum of the payments within (a) to (c) is not greater than the *cash price* referred to in (3), the *total amount payable*, being the total of:

- (a) *advance payments*;
- (b) the amount of *credit* repayable by the *customer*, and
- (c) the amount of the *total charge for credit*.

[**Note:** paragraph 7 of schedule 2 to *CCAR 2004*]

3.7 Financial promotions and communications: credit brokers

Application

- 3.7.1 R This section applies to a *financial promotion* or a communication with a *customer* in relation to *credit broking* in relation to a *regulated credit agreement*.
- 3.7.2 R *CONC 3.7.4G* also applies to a *financial promotion* or a communication with a *customer* in relation to the activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to a *credit agreement* that would be a *regulated credit agreement* but for the *relevant provisions*.

Credit brokers' status

- 3.7.3 R A *firm* must, in a *financial promotion* or a document which is intended for *individuals* which relates to its *credit broking*, indicate the extent of its powers and in particular whether it works exclusively with one or more *lenders* or works independently.

[**Note:** section 160A(3) of *CCA*]

[**Note:** article 21(a) of the *Consumer Credit Directive*]

- 3.7.4 G A *firm* should in a *financial promotion* or in a communication with a *customer*:
 - (1) make clear, to the extent an average *customer* of the *firm* would understand, the nature of the service that the *firm* provides;

[**Note:** paragraphs 3.7e and 4.8b of *CBG*]
 - (2) indicate to the *customer* in a prominent way the existence of any financial arrangements with a *lender* that might impact upon the *firm's* impartiality in promoting a credit product to a *customer*;

[**Note:** paragraphs 2.2, 6th bullet and 4.6 of *CBG*]
 - (3) only describe itself as independent if it is able to provide access to a representative range of credit products from the relevant product

market on competitive terms and is not constrained in providing such access, for example, because of one or more agreements with *lenders*; and

[**Note:** paragraph 4.5 of *CBG*]

- (4) ensure that any disclosure about the extent of its independence is prominent and in accordance with the clear, fair not misleading *rule* in *CONC* 3.3.1R, clear and easily comprehensible.

[**Note:** paragraph 4.6 of *CBG*]

3.8 Financial promotions and communications: lenders

Application

- 3.8.1 R This section applies to a *financial promotion* or a communication with a *customer* in relation to *consumer credit lending*.

Unfair business practices

- 3.8.2 R A *firm* must not in a *financial promotion* or a communication with a *customer*:
- (1) provide an application for *credit* with a pre-completed amount of *credit* which is not based on having carried out a *creditworthiness assessment* or an assessment required by *CONC* 5.2.2R(1); or
[**Note:** paragraph 5.3 of *ILG*]
 - (2) suggest or state, expressly or by implication, that providing *credit* is dependent solely upon the value of the equity in property on which the agreement is to be secured; or
[**Note:** paragraph 5.4 of *ILG*]
 - (3) promote *credit* where the *firm* knows, or has reason to believe, that the agreement would be unsuitable for that *customer* in the light of the *customer's* financial circumstances or, if known, intended use of the *credit*.
[**Note:** paragraph 5.5 of *ILG*]
- 3.8.3 G An agreement is likely to be unsuitable for the purposes of *CONC* 3.8.2R(3) including in the following situations where a *firm*:
- (1) promotes, suggests or advises taking out a secured loan or to take out a secured loan to replace or convert an unsecured loan when it is clearly not in that *person's* best interests to do so at that time; or
 - (2) promotes, suggests or advises taking out *high-cost short-term credit* which would be expensive as a means of longer term borrowing, as

being suitable for sustained borrowing over a longer period.

[Note: paragraph 5.5 (box) of *ILG*]

- 3.8.4 G For the purposes of *CONC* 3.8.2R(3) the unsuitability of an agreement does not apply to the question of whether a *customer* should enter into a *regulated credit agreement* at all.

[Note: paragraph 5.5 (box) of *ILG*]

3.9 Financial promotions and communications: debt counsellors and debt adjusters

Application

- 3.9.1 R This section applies to a *financial promotion* or a communication with a *customer* in relation to *debt counselling* and to *debt adjusting*.

Financial promotions and communications

- 3.9.2 G (1) The clear, fair and not misleading *rule* in *CONC* 3.3.1R applies to a communication with a *customer* or the *communication* or *approval for communication* of a *financial promotion* in relation to *debt counselling* or *debt adjusting* and in relation to a communication with a *customer* in relation to *providing credit information services*.
- (2) In the light of the complexity of *debt counselling*, it is unlikely that media which provide restricted space for messages would be a suitable means of making *financial promotions* about *debt solutions*.

Contents of financial promotions and communications

- 3.9.3 R A *firm* must ensure that a *financial promotion* or a communication with a *customer* (to the extent a previous communication to the same *customer* has not included the following information) includes:

- (1) a statement of the services the *firm* offers;
- (2) a statement of any relationship with a business associate which is relevant to the services offered in the promotion;

[Note: paragraph 2.5a of *DMG*]

- (3) a statement setting out the level of fees charged for the *firm's* services, how they are calculated, what service they cover and where it is not possible to state an exact amount, a reasonable estimate of the anticipated fees, or the average level of its fees, for the service in question;

[Note: paragraphs 2.5c and 3.18f of *DMG*]

- (4) a statement of whether any aspect of the services is provided by a

third party or at extra cost;

[Note: paragraphs 2.5a and 3.18f of *DMG*]

- (5) a statement that a *customer* may be eligible under the *Financial Ombudsman Scheme* and referring by a link or otherwise to the information the *firm* is required to publish under *DISP* 1.2.1R(1);

[Note: paragraph 2.5b of *DMG*]

- (6) where this is the case, a statement that the *firm's* service is profit-seeking;

[Note: paragraphs 2.5c and 3.18a of *DMG*]

- (7) where this is the case, a statement that the *firm's* service is offered in return for payment from the *customer*;

[Note: paragraphs 2.5c and 3.18a of *DMG*]

- (8) other than for a *not-for-profit debt advice body*, a reference to impartial information and to sources of assistance from *not-for-profit debt advice bodies*;

[Note: paragraph 2.5d of *DMG*]

- (9) where the *financial promotion* or communication sets out detail of how a *customer* might resolve debt problems by explaining options, the most important actual or potential advantages, disadvantages and risk of each option, including those of the *debt solution* offered by the *firm*;

[Note: paragraphs 2.5d and 3.18h of *DMG*]

- (10) a statement setting out the likely adverse effect of entering into the *debt solution* in question on the *customer's* credit rating;

[Note: paragraph 3.18g of *DMG*]

- (11) a statement setting out that evidence of entering into an individual voluntary arrangement, a debt relief order or a protected trust deed will be entered on a public register;

[Note: paragraph 3.18g of *DMG*]

- (12) where applicable, a statement setting out that a *debt solution* is only available in a particular country of the *UK*;

[Note: paragraph 3.18i of *DMG*]

- (13) where entry into a *debt solution* with the *firm* will lead to a period when payments to a *customer's* lenders (in whole or in part) are not made or are retained by the *firm*, a warning of the likelihood of falling into arrears or increasing arrears and an explanation of when distributions would be made to *lenders*;

[**Note:** paragraph 3.18n of *DMG*]

- (14) a statement of the risks of entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including of the following risks:
- (a) if the arrangement or deed fails, the risk of bankruptcy;
 - (b) homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended for 12 *months*;
 - (c) there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
 - (d) the *customer's lenders* may not approve the individual voluntary arrangement or the protected trust deed; and
 - (e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding; and

[**Note:** paragraph 3.18o of *DMG*]

- (15) a statement that where another option for dealing with a *customer's* debts is available, that another option is available and may be suitable for the *customer*.

[**Note:** paragraph 3.18r of *DMG*]

3.9.4 G In *CONC* 3.9.3R(8) making reference to impartial sources of information should include making *customers* aware of publications concerning dealing with creditors published by the Insolvency Service (England and Wales), the Department of Enterprise, Trade and Investment (Northern Ireland) or debt advice published by the Scottish Government.

3.9.5 R A *financial promotion* or a communication with a *customer* by a *firm* must not:

- (1) falsely claim or imply that the help and debt advice is provided on a free, impartial or independent basis, where the *firm* has a profit-seeking motive;

[**Note:** paragraph 3.18b of *DMG*]

- (2) falsely claim in any way that the *firm* is, or represents, a charitable or *not-for-profit body* or government or local government organisation;

[Note: paragraph 3.18c of *DMG*]

- (3) promote a claims management service (within the meaning of section 4 of the Compensation Act 2006) as a way of managing a *customer's* debts;

[Note: paragraph 3.18k of *DMG*]

- (4) claim or imply that the *firm* can guarantee a favourable outcome in negotiations with a *lender* concerning the *customer's* debts;

[Note: paragraph 3.18m of *DMG*]

- (5) unfairly request, suggest or direct a *customer* to call the *firm* using a premium rate telephone number.

[Note: paragraph 3.18w of *DMG*]

- 3.9.6 G An example of unfairly directing a *customer* to a premium rate telephone number may be to direct a *person* wishing to complain to such a number.

On-line promotion of debt solutions

- 3.9.7 R A *firm* must not:

- (1) unless it is a *not-for-profit debt advice body* or a person who will provide such services, operate a look-alike website designed to attract *customers* seeking free, charitable, not-for-profit or governmental or local governmental debt advice; or

[Note: paragraph 3.20a of *DMG*]

- (2) seek to use internet search tools or search engines so as to mislead a *customer* into visiting its website when the *customer* is seeking free, charitable, not-for-profit or governmental or local governmental debt advice.

[Note: paragraph 3.20b of *DMG*]

3.10 Financial promotions not in writing

Application

- 3.10.1 R This section applies:

- (1) to a *financial promotion* in relation to *consumer credit lending, credit broking, debt counselling, debt adjusting, operating an electronic systems in relation to lending* in relation to prospective *borrowers* under *P2P agreements*;

- (2) in relation to the communication of a *financial promotion* that is not in

writing.

Promotions that are not in writing

- 3.10.2 R A *firm* must not *communicate* a solicited or unsolicited *financial promotion* that is not in writing, to a *customer* outside the *firm's* premises, unless the *person communicating* it:
- (1) only does so at an appropriate time of the day; and
 - (2) identifies that *person* and the *firm* represented at the outset and makes clear the purpose of the communication.
- [Note: paragraphs 3.9d of *CBG* and 3.12b of *DMG*]

3.11 Not approving certain financial promotions

- 3.11.1 R This section applies to a *financial promotion* in relation to a *credit agreement*, *credit broking*, *debt counselling*, *debt adjusting* and *operating an electronic system in relation to lending* in relation to prospective *borrowers* or *borrowers* under *P2P agreements*.

Requirement not to approve certain financial promotions

- 3.11.2 R A *firm* must not *approve* a *financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.
- 3.11.3 G *CONC* 3.11.2R does not prevent the communication by a *firm* itself (i.e. a *firm* with a permission) of a *financial promotion*. A *firm's* approval of a *financial promotion* concerns approval for the communication of the promotion by an *unauthorised person* which is prevented by *CONC* 3.11.2R.

4 Pre-contractual requirements

4.1 Content of quotations

Application

- 4.1.1 R This section, apart from *CONC* 4.1.4R, applies to:
- (1) a *firm* with respect to *consumer credit lending*; or
 - (2) a *firm* with respect to *consumer hiring*;
- including where the *firm* provides a quotation acting on behalf of a *customer*.
- 4.1.2 R *CONC* 4.1.4R applies to a *firm* with respect to *credit broking*, including where the *firm* provides a quotation acting on behalf of a *customer*.

Lenders and owners: contents of quotation for certain agreements

- 4.1.3 R (1) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.
- [Note: regulation 3a of SI 1999/2725]
- (2) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home under which, while C continues to occupy the home as C's main residence and either:
- (a) no instalment *repayments* of the *credit* secured by a mortgage on C's home and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by C), are due or capable of becoming due; or
 - (b) the *lender* cannot enforce the *credit agreement* by taking possession of or selling (or concurring with any other *person* in selling) the home or any part of it while C continues to occupy it as C's main residence; and
 - (c) where (b) applies, although interest payments may become due, no full or partial *repayment* of the *credit* secured by a mortgage is due or capable of becoming due.
- [Note: regulation 3B of SI 1999/2725]
- the *firm* must include (or cause to be included) in the quotation the following statement:
- “CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE.”
- [Note: regulation 3A of SI 1999/2725]
- (3) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home, other than an agreement to which (2) applies, the *firm* must include (or cause to be included) in the quotation the following statement:
- “YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT.”
- [Note: regulation 3b of SI 1999/2725]
- (4) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would be secured on *land* and

under which *repayments* would be made in a currency other than sterling, the *firm* must include (or cause to be included) in the quotation the following statement:

“THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT.”

[**Note:** regulation 4 of SI 1999/2725]

- (5) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.

[**Note:** regulation 5a of SI 1999/2725]

- (6) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”

[**Note:** regulation 5b of SI 1999/2725]

Credit brokers: contents of quotation for certain agreements

- 4.1.4 R (1) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would or might be secured on the *customer's* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.
- [**Note:** regulation 6 of SI 1999/2725]
- (2) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C's home under which, while C continues to occupy the home as C's main residence and either:
- (a) no instalment *repayments* of the *credit* secured by a mortgage on C's home and no payment of interest on the *credit* (other than interest charged when all or part of the *credit* is repaid voluntarily by C), are due or capable of becoming due; or
 - (b) the *lender* cannot enforce the *credit agreement* by taking possession of or selling (or concurring with any other *person* in selling) the home or any part of it while C continues to occupy it as C's main residence; and
 - (c) where (b) applies, although interest payments may become due, no full or partial *repayment* of the *credit* secured by a mortgage

is due or capable of becoming due;

the *firm* must include (or cause to be included) in the quotation the following statement:

“CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN DOUBT, SEEK INDEPENDENT ADVICE.”

- (3) When a *firm* provides a quotation to a *customer* (C) in connection with a prospective *credit agreement* which would or might be secured on C’s home, other than an agreement to which (2) applies, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOAN SECURED ON IT.”

- (4) When a *firm* provides a quotation to a *customer* in connection with a prospective *credit agreement* which would be secured on *land* and under which *repayments* would be made in a currency other than sterling, the *firm* must include (or cause to be included) in the quotation the following statement:

“THE STERLING EQUIVALENT OF YOUR LIABILITY UNDER A FOREIGN CURRENCY MORTGAGE MAY BE INCREASED BY EXCHANGE RATE MOVEMENT.”

- (5) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer’s* home, the *firm* must include (or cause to be included) in the quotation a statement that such *security* would or might be required.

- (6) When a *firm* provides a quotation to a *customer* in connection with a prospective agreement for the bailment of *goods* which would or might be secured on the *customer’s* home, the *firm* must include (or cause to be included) in the quotation the following statement:

“YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A HIRE AGREEMENT SECURED BY A MORTGAGE OR OTHER SECURITY ON YOUR HOME.”

Interpretation: quotations

- 4.1.5 R (1) Paragraphs (2) to (5) apply to *CONC* 4.1.3R and *CONC* 4.1.4R (rules on content of quotations).
- (2) “Quotation” means any document by which a *person* gives a *customer* information about the terms on which the *person* or a *lender* or *owner* is prepared to do business, but it does not include:

- (a) a communication which is also a *financial promotion*;
 - (b) any document given to a *customer* under section 58 of the CCA (opportunity for withdrawal from prospective land mortgage);
 - (c) any document sent to a *customer* for signature which embodies the terms or such of them as it is intended to reduce to writing of a *credit agreement* or a *consumer hire agreement*; or
 - (d) any copy of an unexecuted agreement delivered or sent to a *customer* under section 62 of the CCA (duty to supply copy of unexecuted agreement).
- (3) Where the words of a statement which must be included in a quotation are specified, the statement must be:
- (a) in capital letters;
 - (b) clear and legible; and
 - (c) prominent.
- (4) Providing a quotation includes making a quotation available temporarily.
- (5) In these *rules* as they apply to Scotland:
- (a) any reference to bailment is a reference to hiring; and
 - (b) any reference to a mortgage or a charge on *land* is a reference to a standard security over *land* within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970.

4.2 Pre-contract disclosure and adequate explanations

Application

- 4.2.1 R This section, unless otherwise stated in or in relation to a *rule*:
- (1) applies to a *firm* with respect to *consumer credit lending*;
 - (2) applies to a *firm* with respect to *credit broking* where the *firm* has or takes on responsibility for providing the disclosures and explanations to *customers* required by this section;
 - (3) does not apply to an agreement under which the *lender* provides the *customer* with *credit* which exceeds £60,260;
 - (4) does not apply to an agreement secured on *land*; and

- (5) does not apply to a *borrower-lender agreement* enabling the *customer* to overdraw on a current account other than such an agreement which would be an *authorised non-business overdraft agreement*, but for the fact that the *credit* is not repayable on demand or within three *months*.

[**Note:** section 74(1D) of *CCA*]

- 4.2.2 G For the agreements referred to in *CONC* 4.2.1R(3), (4) and (5), a *firm* within *CONC* 4.2.1R(1) or (2) should consider whether it is necessary or appropriate to provide explanations of the matters in *CONC* 4.2.5R(2); in particular, a *firm* should consider highlighting the principal consequences to the *customer* including the consequences of missing payments or under-paying, including, where applicable, the risk of repossession of the *customer's* property.

[**Note:** section 55A(6) of *CCA* and paragraphs 3.1(box) of *ILG* and 3.5 of *SCLG*]

Other disclosure requirements

- 4.2.3 G (1) The *disclosure regulations* made under section 55 of the *CCA* which require information to be disclosed before a *regulated credit agreement* is made remain in force.
- (2) Failure to comply with the *disclosure regulations* has the effect that agreements are enforceable against a borrower or hirer (as defined in the *CCA*) only with an order of court and enforcement for that purpose includes a retaking of goods or *land* to which the agreement relates.
- (3) Other relevant disclosure requirements are found in *CONC* 2.7 (distance marketing) and *CONC* 2.8 (electronic commerce), the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095), the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) and the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) and the Cancellation of Contracts made in the Consumer's home etc Regulations 2008 (SI 2008/1816).
- 4.2.4 G The pre-contractual information disclosed under the *disclosure regulations* and the pre-contractual explanations required under *CONC* 4.2.5R should take into account any preferences expressed, or information provided by, the *customer* where the *firm* would in principle agree to offer *credit* on such terms.

[**Note:** paragraph 3.13 (box) of *ILG*]

Pre-contractual adequate explanations

- 4.2.5 R (1) Before making a *regulated credit agreement* the *firm* must:
- (a) provide the *customer* with an adequate explanation of the matters referred to in (2) in order to place the *customer* in a position to assess whether the agreement is adapted to the

customer's needs and financial situation;

- (b) advise the *customer*:
 - (i) to consider the information which is required to be disclosed under section 55 of the *CCA*; and
 - (ii) where the information is disclosed in person, that the *customer* is able to take it away;
- (c) provide the *customer* with an opportunity to ask questions about the agreement; and
- (d) advise the *customer* how to ask the *firm* for further information and explanation.

[**Note:** section 55A(1) of *CCA*]

- (2) The matters referred to in (1)(a) are:
 - (a) the features of the agreement which may make the *credit* to be provided under the agreement unsuitable for particular types of use;
 - (b) how much the *customer* will have to pay periodically and, where the amount can be determined, in total under the agreement;
 - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the *customer* in a way which the *customer* is unlikely to foresee;
 - (d) the principal consequences for the *customer* arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon the type and amount of *credit* and the circumstances of the *customer*:
 - (i) the total cost of the debt growing;
 - (ii) incurring any default charges or interest for late or missed payment or under-payment;
 - (iii) impaired credit rating and its effect on future access to or cost of *credit*;
 - (iv) legal proceedings, including reference to charging orders (or, in Scotland, inhibitions), and to the associated costs of such proceedings;
 - (v) repossession of the *customer's* home or other property; and

- (vi) where an article is taken in *pawn*, that the article might be sold, if not redeemed; and
- (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.
[Note: section 55A(2) of CCA and paragraph 3.13 of ILG]
- (3) The adequate explanation and advice in (1) may be given orally or in writing, except where (4) applies.
[Note: section 55A(3) of CCA]
- (4) Where the matters in (2)(a), (b) or (e) are given orally or to the *customer* in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the *customer*.
[Note: section 55A(4) of CCA]
- (5) Paragraphs (1) to (4) do not apply to a *lender* if a *credit broker* has complied with those sub-paragraphs in respect of the agreement.
[Note: section 55A(5) of CCA]
- (6) Where the *regulated credit agreement* is an agreement under which a person takes an article in *pawn*:
 - (a) the requirement in (1)(a) only relates to the matters in (2)(d) and (e); and
 - (b) the requirements in (1)(b) and (d) do not apply.
[Note: section 55A(7) of CCA]
- (7) This *rule* does not apply to:
 - (a) a *non-commercial agreement*;
 - (b) a *small borrower-lender-supplier agreement* for *restricted-use credit*.
[Note: section 74(1) of CCA]
- (8) Where this *rule* applies to a *borrower-lender agreement* to finance the making of payments arising on or connected with the death of a person, the payments in question are set out in (9).
[Note: section 74(1F) of CCA]
- (9) The payments referred to in (8) are:
 - (a) inheritance tax chargeable in the *UK* on the death of any person;
 - (b) fees payable to a court:

- (i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;
 - (ii) in Scotland, in connection with a grant of confirmation; and
 - (iii) in the *UK*, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and
- (c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.

[**Note:** regulation 2 of SI 1983/1554]

[**Note:** article 5(6) of the *Consumer Credit Directive*]

- 4.2.6 G The explanation provided by a *lender* or a *credit broker* under *CONC 4.2.5R* should enable the *customer* to make a reasonable assessment as to whether the *customer* can afford the *credit* and to understand the key associated risks.

[**Note:** paragraph 3.3 (box) of *ILG*]

- 4.2.7 G In deciding on the level and extent of explanation required by *CONC 4.2.5R*, the *lender* or *credit broker* should consider (and each of them should ensure that anyone acting on its behalf should consider), to the extent appropriate to do so, factors including:

- (1) the type of *credit* being sought;
- (2) the amount of *credit* to be provided and the associated cost and risk to the *customer* (the risk to the *customer* is likely to be greater the higher the total cost of the *credit* relative to the *customer's* financial situation);
- (3) to the extent it is evident and discernible, the *customer's* level of understanding of the explanation provided; and
- (4) the channel or medium through which the credit transaction takes place.

[**Note:** paragraph 3.4 of *ILG*]

- 4.2.8 R Where the *regulated credit agreement* is *high-cost short-term credit*, the *lender* or a *credit broker* must explain under *CONC 4.2.5R(1)(a)* that entering into that agreement would be unsuitable to support sustained borrowing over long periods and would be expensive as a means of longer term borrowing.

[**Note:** paragraph 3.13 (box) of *ILG*]

- 4.2.9 R Even where a *customer* states or implies that there is no need for an explanation of the *regulated credit agreement*, the *lender* or *credit broker* must continue to comply with *CONC 4.2.5R*.
[Note: paragraph 3.10 of *ILG*]
- 4.2.10 R A *lender* or a *credit broker* must not encourage or induce a *customer* to waive the rights in *CONC 4.2.5R*.
[Note: paragraph 3.10 of *ILG*]
- 4.2.11 R Before a *lender* concludes that *CONC 4.2.5R*(1) to (4) do not apply to it in relation to a *regulated credit agreement* by virtue of *CONC 4.2.5R*(5), the *lender* must take reasonable steps to satisfy itself that an explanation of that agreement complying with *CONC 4.2.5R* has been provided to the *customer* by the *credit broker*.
[Note: paragraph 3.11 (box) of *ILG*]
- 4.2.12 R The *lender* or the *credit broker* must enable a *customer* to request and obtain further information and explanation about a *regulated credit agreement* without incurring undue cost or delay.
[Note: paragraph 3.16 (box) of *ILG*]
- 4.2.13 R Neither a *lender* nor a *credit broker* may require a *customer* to acknowledge that the information and explanations it has provided are adequate to satisfy the requirements of *CONC 4.2.5R*.
[Note: paragraph 3.30 (box) of *ILG*]
- 4.2.14 G A *lender* or *credit broker* may require an acknowledgement that it has provided an explanation, and of receipt of any written information that forms a part of the explanation, but not an acknowledgement as to its adequacy. *CONC 4.2.13R* does not prevent the *lender* or *credit broker* asking if the *customer* has understood an explanation given.
[Note: paragraph 3.30 (box) of *ILG*]

Adequate explanations in relation to particular regulated credit agreements

- 4.2.15 R The following information must be provided by the *lender* or a *credit broker* as part of, and in addition to that provided under, the adequate explanation required by *CONC 4.2.5R*, where applicable, in the specified cases:
- (1) for *credit token agreements*:
 - (a) different rates of interest and different charges apply to different elements of the *credit* provided (for example, a higher cost of withdrawing cash);
 - (b) the implications of only making minimum *repayments*;
 - (c) interest rates may be increased;

- (d) where applicable, the interest rates may be increased based on the risks presented by the individual *customer*;
 - (e) the limitations on any zero percentage or low interest or other introductory offer; and
 - (f) conditions on any balance transfers, including any fees and charges which may apply;
- (2) for *credit card cheques*, the higher associated costs relative to payment by credit card;
- (3) for *home credit loan agreements* and *high-cost short-term credit*, the effect of refinancing (within the meaning in *CONC 6.7.17R*) or otherwise extending the duration of the *credit* or of the *credit agreement*;
- (4) for *bill of sale loan agreements*:
- (a) the risk of losing the asset which is the subject of the bill of sale and the loss this could entail;
 - (b) that repossession can take place without a court order;
 - (c) that repossession may not clear the debt owed; and
 - (d) unlike in the case of *hire-purchase agreements* and *conditional sale agreements*, the *customer* is not protected under this arrangement from repossession of the asset where one third or more of the *total amount payable* has been paid off;
- (5) for *hire purchase agreements* and *conditional sale agreements*:
- (a) the *customer* does not own the *goods* until the sums required under the agreement have been paid, including any option to purchase fee and any other conditions have been satisfied;
 - (b) *goods* can be repossessed without a court order in the event of default, unless in relation to a *regulated credit agreement* the *customer* has paid a third or more of the *total amount payable*;
- (6) for a *credit agreement* which is used to consolidate existing debts of the *customer* (whether to the same *lender* or to another *person*) and where applicable in each case:
- (a) the effect of consolidating the debts will involve payment of a higher rate of interest or charges or both (if the relevant information about existing debts is known to the *lender* or *credit broker*);
 - (b) the effect of consolidating the debts will involve increasing the period required for repayment (if the relevant information about

existing debts is known to the *lender* or *credit broker*); and

(c) the *credit agreement* would be secured on the *customer's* property;

(7) for a *credit agreement* which includes a condition requiring a guarantor, the requirement for the *customer* to provide *security* in the form of a guarantee.

[**Note:** paragraph 4.26c of *CBG*]

[**Note:** paragraph 3.13 of *ILG*]

4.2.16 G Where a *customer* does not have a good understanding of the English language, the *lender* or *credit broker* may need to consider alternative methods of providing relevant information concerning the explanation required by *CONC* 4.2.5R in order for the *customer* to make an informed decision, such as, providing the information to a person with such understanding who can assist the *customer*, for example, a friend or relative.

[**Note:** paragraph 3.4 (box) of *ILG*]

Guidance for adequate explanations where agreements are marketed by distance or electronic means

4.2.17 G Since the use of distance means of communication (such as the internet) by their nature limit the *lender's* or *credit broker's* ability to ascertain the *customer's* level of understanding of explanations provided, a *lender* or *credit broker* using those means may, for example, wish to provide local rate telephone number for *customers* who wish to seek further explanation.

[**Note:** paragraph 3.6 (box) of *ILG*]

4.2.18 G Interaction is an important part of compliance with the requirement in *CONC* 4.2.5R(1), for example, where the agreement is marketed and concluded by *electronic means*. For an online application, the requirement in *CONC* 4.2.5R(1)(c) (the right to ask questions) may be complied with by the *customer* being able to access an appropriately comprehensive set of answers to frequently asked questions about the agreement or by being able to speak to a representative of the online provider.

[**Note:** paragraph 3.8 (box) of *ILG*]

4.2.19 G For a *regulated credit agreement* marketed and concluded by *electronic means* to comply with *CONC* 4.2.5R the *customer* should pass through screens containing the required information and explanations, giving the *customer* the opportunity to see and read the explanations provided. Merely providing a link to where such information can be found is unlikely to satisfy the requirements in *CONC* 4.2.5R, where the agreement can be concluded without accessing the link.

[**Note:** paragraph 3.15 (box) of *ILG*]

4.2.20 G For telephone or face-to-face transactions, interaction between the *customer*

and the *firm's* representative is also important. It should be made clear to the *customer* that the *customer* can ask questions or request further information or explanation and, for example, the representative solely providing the *customer* with a written explanation of an agreement, or relying solely on a written script in relation to an agreement, is unlikely to comply with the requirement in *CONC 4.2.5R*.

[**Note:** paragraph 3.9 (box) of *ILG*]

- 4.2.21 G Where a *regulated credit agreement* is a modifying agreement under section 82(2) of the *CCA*, the requirements in *CONC 4.2* apply before the agreement is made.

[**Note:** paragraph 3.12 of *ILG*]

4.3 Adequate explanations: P2P agreements

Application

- 4.3.1 R This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* or prospective *borrower* under a *P2P agreement*.
- 4.3.2 R This section (apart from *CONC 4.3.6R*) does not apply to:
- (1) an agreement under which the *lender* provides the prospective *borrower* with *credit* which exceeds £60,260; or
 - (2) an agreement secured on *land*.
- 4.3.3 G For the agreements referred to in *CONC 4.3.2R*, a *firm* should consider whether it is necessary or appropriate to provide explanations of the matters in *CONC 4.5.3R(2)*, in particular, a *firm* should consider highlighting key risks to the *borrower* including the consequences of missing payments or under-paying, including, where applicable, the risk of repossession of the *borrower's* property.

[**Note:** section 55A(6) of *CCA* and paragraph 3.1 of *ILG*]

Adequate explanations

- 4.3.4 R (1) Before a *P2P agreement* is made, the *firm* must:
- (a) provide the prospective *borrower* with an adequate explanation of the matters referred to in (2) in order to place the *borrower* in a position to assess whether the agreement is adapted to the *borrower's* needs and financial situation;
 - (b) where the *P2P agreement* is not a *non-commercial agreement*, advise the prospective *borrower*:

- (i) to consider the information which is required to be disclosed under section 55(1) of the *CCA*; and
 - (ii) where the information is disclosed in person, that the *borrower* is able to take it away;
- (c) provide the prospective *borrower* with an opportunity to ask questions about the agreement; and
 - (d) advise the prospective *borrower* how to ask the *firm* for further information and explanation.
- (2) The matters referred to in (1)(a) are:
- (a) the features of the agreement which may make the *credit* to be provided under the agreement unsuitable for particular types of use;
 - (b) how much the *borrower* will have to pay periodically and, where the amount can be determined, in total under the agreement;
 - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the *borrower* in a way which the prospective *borrower* is unlikely to foresee;
 - (d) the principal consequences for the *borrower* arising from a failure to make payments under the agreement at the times required by the agreement, including legal proceedings and, where this is a possibility, repossession of the *borrower's* home; and
 - (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.
- (3) Except where (4) applies, the adequate explanation and advice in (1) may be given orally or in writing.
- (4) Where the matters in (2)(a), (b) or (e) are given orally or to the prospective *borrower* in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the *borrower*.
- (5) Where this *rule* applies to a *borrower-lender agreement* to finance the making of payments arising on or connected with the death of a person, this *rule* applies to the agreement to the extent the payments are:
- (a) inheritance tax chargeable in the *UK* on the death of any person;

- (b) fees payable to a court:
 - (i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;
 - (ii) in Scotland, in connection with a grant of confirmation; and
 - (iii) in the *UK*, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and
- (c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.

[**Note:** section 74(1F) of *CCA* and SI 1983/1554]

- 4.3.5 R Where *CONC* 4.3.4R applies to a *firm*, the *firm* must comply with the *rules*, and observe the *guidance*, in *CONC* 4.2 to the same extent as if it were the *lender* under an agreement to which those *rules* apply.
- 4.3.6 R Before a *P2P agreement* which is secured on the *borrower's* home is made, a *firm* must in a prominent way give the following warning:
 “YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT”

4.4 Pre-contractual requirements: credit brokers

Application

- 4.4.1 R This section applies to a *firm* carrying on *credit broking* in relation to a *regulated credit agreement*.

Pre-contractual requirements

- 4.4.2 R (1) A *firm* must disclose to the *customer* the fee, if any, payable by a *customer* to the *firm* for its services.
 [**Note:** section 160A(4) of *CCA*]
- (2) Any fee to be paid by the *customer* to the *firm* must be agreed between the *customer* and the *firm*, and that agreement must be recorded in writing or other *durable medium* before a *regulated credit agreement* is entered into.
 [**Note:** section 160A(4) of *CCA*]

- (3) A *firm* must disclose to the *lender* the fee, if any, for its activity payable by the *customer* for the purpose of enabling the *lender* to calculate the *annual percentage rate of charge* for the *credit agreement*.

[**Note:** section 160A(5) of *CCA*]

- (4) A *firm* must disclose to the *customer* how and when any fee for its service is payable and in what circumstances a refund may be payable, including how and when a refund is available under section 155 of the *CCA*.

[**Note:** paragraphs 2.2 and 4.17b of *CBG*]

[**Note:** article 21(b) and (c) of the *Consumer Credit Directive*]

4.5 Commissions

Application

- 4.5.1 R (1) *CONC* 4.5.2G applies to a *firm* with respect to *consumer credit lending*.
- (2) *CONC* 4.5.3R and 4.5.4R apply to a *firm* with respect to *credit broking* in relation to:
- (a) *regulated credit agreements*; and
- (b) *regulated consumer hire agreements*.
- (3) *CONC* 4.5.3R and 4.5.4R also apply to a *firm* carrying on the activities specified in article 36A(1)(a) or (c) of the *Regulated Activities Order* in relation to:
- (a) *credit agreements* that would be *regulated credit agreements* but for the *relevant provisions*; and
- (b) *consumer hire agreements* that would be *regulated consumer hire agreements* but for articles 60O and 60Q of the *Regulated Activities Order*.

Commissions: lenders to credit brokers

- 4.5.2 G A *lender* should only offer to or enter into with a *firm* a commission agreement providing for differential commission rates or providing for payments based on the volume and profitability of business where such payments are justified based on the extra work of the *firm* involved in that business.

[**Note:** paragraph 5.5 (box) of *ILG*]

Commissions: credit brokers

- 4.5.3 R A *credit broker* must disclose to a *customer* in good time before a *credit agreement* or a *consumer hire agreement* is entered into, the existence of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner* or a third party in relation to a *credit agreement* or a *consumer hire agreement*, where knowledge of the existence or amount of the commission could actually or potentially:
- (1) affect the impartiality of the *credit broker* in recommending a particular product; or
 - (2) have a material impact on the *customer's* transactional decision.
- [Note: paragraphs 3.7i (box) and 3.7j of *CBG* and 5.5 (box) of *ILG*]
- 4.5.4 R At the request of the *customer*, a *credit broker* must disclose to the *customer*, in good time before a *regulated credit agreement* or a *regulated consumer hire agreement* is entered into, the amount (or if the precise amount is not known, the likely amount) of any commission or fee or other remuneration payable to the *credit broker* by the *lender* or *owner* or a third party.
- [Note: paragraph 3.7i (box) of *CBG*]

4.6 Pre-contract disclosure: continuous payment authorities

Application

- 4.6.1 R (1) This section applies to:
- (a) a *firm* with respect to *consumer credit lending*; or
 - (b) a *firm* with respect to *consumer hiring*; or
 - (c) a *firm* with respect to *operating an electronic system in relation to lending* in relation to a prospective *borrower* under a *P2P agreement*.

Disclosure of continuous payment authorities

- 4.6.2 R (1) Before entering into a *regulated credit agreement* or *regulated consumer hire agreement*, or before a *P2P agreement* is entered into, under which the *customer* may grant a *continuous payment authority*, the *firm* must provide the *customer* with an adequate explanation of the matters in (2).
- (2) The matters referred to in (1) are:
- (a) what a *continuous payment authority* is and how it works;

- (b) how the *continuous payment authority* will be applied by the *firm*, including where the *firm* provides *high-cost short-term credit* that it may only be used twice to collect the whole sum due in relation to the agreement or where the agreement provides for repayment in instalments, in relation to an instalment;
- (c) how the *customer* can cancel the *continuous payment authority*;
- (d) whether alternative repayment options are available;
- (e) the choice of an appropriate due date for payment;
- (f) the choice of an alternative payment date (if applicable);
- (g) the consequences if sufficient funds are not available on the due date (or an alternative payment date if agreed);
- (h) whether further attempts may be made to collect payment and, if so, the basis on which further attempts would be made, the days or period over which the further attempts would be made and the frequency of the further attempts;
- (i) other than in relation to *high-cost short-term credit*, whether part payment (a sum due which less than the full sum due at the time the *firm's* payment request is made) may be sought and, if so, the basis on which and frequency with which payment would be sought and whether part payments would be subject to a minimum amount or percentage;
- (j) in relation to *high cost short term credit*, the *firm* will not seek part payment (a sum due which is less than the full sum due at the time the *firm's* payment request is made) unless the *firm* is willing to accept such less sum and, after being notified of that sum and when a payment request would be made, the *customer* has given express consent to the *firm* to make such a payment request; and
- (k) whether default fees and other charges may be added and, if so, the circumstances in which these may be incurred and the amount of such fees and charges or the basis on which they will be calculated.

[**Note:** paragraph 3.9miii of *DCG*]

- 4.6.3 R A *firm* must include the terms of the *continuous payment authority* as part of the *credit agreement* or *consumer hire agreement* presented to the *customer* or *P2P agreement* presented to the *borrower*.

[**Note:** paragraph 3.9miii of *DCG*]

- 4.6.4 R A *firm* must set out, in plain and intelligible language, the scope of the agreed

continuous payment authority and how it will operate.

[**Note:** paragraph 3.9miii of *DCG*]

4.7 Information to be provided on entering a current account agreement

Application

4.7.1 R This section applies to a *firm* with respect to *consumer credit lending*.

Information on entering into current account

4.7.2 R (1) When a *firm* enters into a current account agreement where:

- (a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and
- (b) if the account-holder did so, this would be a *regulated credit agreement*;

the current account agreement must contain the information in (2) and (3).

[**Note:** section 74A(1) of *CCA*]

(2) The information required by (1) is:

- (a) the rate of interest charged on the amount by which the account-holder overdraws on the current account or exceeds the pre-arranged overdraft limit;
- (b) any conditions applicable to that rate;
- (c) any reference rate on which that rate is based;
- (d) information on any changes to that rate of interest (including the periods that the rate applies to and any conditions or procedure applicable to changing that rate); and
- (e) any other charges payable by the account holder under the agreement (and the conditions under which those charges may be varied).

[**Note:** section 74A(2) of *CCA*]

(3) Where different rates of interest are charged in different circumstances, the *firm* must provide the information in (2)(a) to (d) in respect of each rate.

[**Note:** section 74A(4) of *CCA*]

[**Note:** article 18 of the *Consumer Credit Directive*]

4.8 Pre-contract: unfair business practices: consumer credit lending

Application

4.8.1 R This section applies to a *firm* carrying on *consumer credit lending*.

Unfair business practices

4.8.2 R A *firm* must not unfairly encourage, incentivise or induce a *customer* to enter into a *regulated credit agreement* quickly without allowing the *customer* time to consider the pre-contract information under section 55 of the *CCA* and the explanations provided under *CONC* 4.2.5R.

[**Note:** paragraph 5.10 of *ILG*]

4.8.3 G Stating an end date for a promotion would not amount to the behaviour in *CONC* 4.8.2R.

[**Note:** paragraph 5.10(box) of *ILG*]

4.8.4 R A *firm* must not unfairly encourage, incentivise or induce a *customer* to enter into a *regulated credit agreement* for an amount higher than the *customer* requests.

[**Note:** paragraph 5.11 of *ILG*]

4.8.5 G Merely offering a *customer* more *credit* than the *customer* requested would not amount to the behaviour in *CONC* 4.8.4R where:

- (1) the offer of the higher amount was based on a proper *creditworthiness assessment* or assessment required by *CONC* 5.2.2R(1); or
- (2) the *firm* offers more advantageous terms, conditions or prices to *customers* for larger loans, provided that such offers are sufficiently transparent and a proper *creditworthiness assessment* or assessment required by *CONC* 5.2.2R(1) has been carried out;

and the *customer* was not pressurised or unfairly coerced into accepting the higher amount of *credit*.

[**Note:** paragraph 5.11 (box) of *ILG*]

4.8.6 R A *firm* must not lead a *customer* to believe that the *customer's* current debt *repayments* can be reduced under a *regulated credit agreement* over the same term when this is not the case.

[**Note:** paragraph 5.13 of *ILG*]

5 Responsible lending

5.1 Application

- 5.1.1 R This chapter applies to a *firm* with respect to *consumer credit lending*, unless otherwise stated in, or in relation to, a *rule*.

5.2 Creditworthiness assessment: before agreement

- 5.2.1 R (1) Before making a *regulated credit agreement* the *firm* must undertake an assessment of the creditworthiness of the *customer*.

[**Note:** section 55B(1) of CCA]

- (2) A *firm* carrying out the assessment required in (1) must consider:

- (a) the potential for the commitments under the *regulated credit agreement* to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time the *regulated credit agreement* is to be made; and

[**Note:** paragraph 4.1 of ILG]

- (b) the ability of the *customer* to make *repayments* as they fall due over the life of the *regulated credit agreement*, or for such an agreement which is an *open-end agreement*, to make *repayments* within a reasonable period.

[**Note:** paragraph 4.3 of ILG]

- (3) A creditworthiness assessment must be based on sufficient information obtained from:

- (a) the *customer*, where appropriate; and
 (b) a *credit reference agency*, where necessary.

[**Note:** section 55B(3) of CCA]

- (4) This *rule* does not apply to:

- (a) an agreement secured on *land*; or
 (b) an agreement under which a *person* takes an article in *pawn*.

[**Note:** section 55B(4) of CCA]

- (5) This *rule* does not apply, except to the agreements in (6), to:

- (a) a *non-commercial agreement*; or

- (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account; or
 - (c) a *small borrower-lender-supplier agreement* for *restricted-use credit*.
[**Note:** section 74 of *CCA*]
- (6) The agreements referred to in (5) and therefore to which this *rule* does apply are:
- (a) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account which is an *authorised business overdraft agreement* or an *authorised non-business overdraft agreement*; and
[**Note:** section 74(1B) and (1C) of *CCA*]
 - (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account which would be an *authorised non-business overdraft agreement* but for the fact that the *credit* is not repayable on demand or within three *months*.
[**Note:** section 74(1D) of *CCA*]
- (7) Where the *borrower-lender agreement* in question is to finance the making of payments arising on or connected with the death of a person, this *rule* applies to the agreement to the extent the payments are:
- (a) inheritance tax chargeable in the *UK* on the death of any person;
 - (b) fees payable to a court:
 - (i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;
 - (ii) in Scotland, in connection with a grant of confirmation; and
 - (iii) in the *UK*, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and
 - (c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.
[**Note:** section 74(1F) of *CCA* and SI 1983/1554]

[**Note:** article 8 of the *Consumer Credit Directive*]

Scope of the pre-contract assessments

- 5.2.2 R (1) Before entering into a *regulated credit agreement* which is excluded from *CONC* 5.2.1R (see (4), (5) and (6)), a *firm* must carry out an assessment of the potential for the commitments under the agreement to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time the agreement is to be made.
- [**Note:** paragraphs 1.14 and 4.1 of *ILG*]
- (2) Paragraph (1) does not apply to an agreement to which *CONC* 4.7.2R(1) applies (overrunning).
- (3) A *firm* must consider sufficient information to enable it to make a reasonable *creditworthiness assessment* or a reasonable assessment required by (1).
- [**Note:** paragraph 4.21 of *ILG*]
- 5.2.3 G The extent and scope of the *creditworthiness assessment* or the assessment required by *CONC* 5.2.2R(1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:
- (1) the type of *credit*;
 - (2) the amount of the *credit*;
 - (3) the cost of the *credit*;
 - (4) the financial position of the *customer* at the time of seeking the *credit*;
 - (5) the *customer's* credit history, including any indications that the *customer* is experiencing or has experienced financial difficulties;
 - (6) the *customer's* existing financial commitments including any repayments due in respect of other *credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm*;
 - (7) any future financial commitments of the *customer*;
 - (8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the *customer*;
 - (9) the vulnerability of the *customer*, in particular where the *firm* understands the *customer* has some form of mental capacity

limitation or reasonably suspects this to be so because the *customer* displays indications of some form of mental capacity limitation (see *CONC 2.10*).

[**Note:** paragraph 4.10 of *ILG*]

Proportionality of assessments

- 5.2.4 G (1) To consider all of the factors set out in *CONC 5.2.3G* in all cases is likely to be disproportionate.
- [**Note:** paragraph 4.11 of *ILG*]
- (2) A *firm* should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of the *credit* being sought and the potential risks to the *customer*. The risk of *credit* not being *sustainable* directly relates to the amount of *credit* granted and the *total charge for credit* relative to the *customer's* financial situation.
- [**Note:** paragraph 4.11 and part of 4.16 of *ILG*]
- (3) A *firm* should consider the types and sources of information to use in its *creditworthiness assessment* and assessment required by *CONC 5.2.2R(1)*, which may, depending on the circumstances, include some or all of the following:
- (a) its record of previous dealings;
 - (b) evidence of income;
 - (c) evidence of expenditure;
 - (d) a credit score;
 - (e) a *credit reference agency* report; and
 - (f) information provided by the *customer*.
- [**Note:** paragraph 4.12 of *ILG*]
- (4) A high level of scrutiny in the assessment required by *CONC 5.2.2R(1)* would normally be expected before the *lender* enters into a *regulated credit agreement* secured by a second or subsequent charge on the *customer's* home.
- [**Note:** paragraph 4.17 of *ILG*]

5.3 Conduct of business in relation to creditworthiness and affordability

Creditworthiness and sustainability

- 5.3.1 G (1) In making the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)*, a *firm* should take into account more than assessing the *customer's* ability to repay the *credit*.
- [Note: paragraph 4.2 of *ILG*]
- (2) The *creditworthiness assessment* and the assessment required by *CONC 5.2.2R(1)* should include the *firm* taking reasonable steps to assess the *customer's* ability to meet *repayments* under a *regulated credit agreement* in a *sustainable* manner without the *customer* incurring financial difficulties or experiencing significant adverse consequences.
- [Note: paragraphs 4.1 (box) and 4.2 of *ILG*]
- (3) A *firm* in making its *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)* may take into account future increases in income or future decreases in expenditure, where there is appropriate evidence of the change and the *repayments* are expected to be *sustainable* in the light of the change.
- [Note: paragraph 4.9 of *ILG*]
- (4) If a *firm* takes income or expenditure into account in its *creditworthiness assessment* or its assessment required under *CONC 5.2.2R(1)*:
- (a) the *firm* should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;
 - (b) it is not generally sufficient for a *firm* to rely solely for its assessment of the *customer's* income and expenditure, on a statement of those matters made by the *customer*;
 - (c) its assessment should be based on what the *firm* knows at the time of the assessment.
- [Note: paragraph 4.13, 4.14 and 4.15 of *ILG*]
- (5) An example of where it may be reasonable to take into account expected future income would be, in the case of loans to fund the provision of further or higher education, provided that an appropriate assessment required by this chapter is carried out and there is an appropriate exercise of forbearance in respect of initial repayments, for example, deferring or limiting the obligation to repay until the *customer's* income has reached a specified level. Any assumptions regarding future income should be reasonable and capable of substantiation in the individual case and the products should be

designed in a way to minimise the risks to the *customer*.

[**Note:** footnote 21 to paragraph 4.9 (box) of *ILG*]

- (6) For the purposes of *CONC* “sustainable” means the *repayments* under the *regulated credit agreement* can be made by the *customer*:
- (a) without undue difficulties, in particular:
 - (i) the *customer* should be able to make *repayments* on time, while meeting other reasonable commitments; and
 - (ii) without having to borrow to meet the *repayments*;
 - (b) over the life of the agreement, or for such an agreement which is an *open-end agreement*, within a reasonable period; and
 - (c) out of income and savings without having to realise security or assets; and

“unsustainable” has the opposite meaning.

[**Note:** paragraphs 4.3 and 4.4 of *ILG*]

- (7) For a *regulated credit agreement* which is an *open-end agreement* the *firm*, in making its *creditworthiness assessment* or the assessment required by *CONC* 5.2.2R(1), should:
- (a) make a reasonable assessment of whether the *customer* is able to meet the *repayments* in a *sustainable* manner; and
 - (b) make the assessment based on reasonable assumptions about the likely duration of the *credit*.

[**Note:** paragraph 4.5 of *ILG*]

- (8) For a *regulated credit agreement* for *running account credit* the *firm*, in making its *creditworthiness assessment* or the assessment required by *CONC* 5.2.2R(1):
- (a) should consider the *customer’s* ability to repay the maximum amount of *credit* available (equivalent to *the credit limit*) under the agreement within a reasonable period;
 - (b) may, in considering what is a reasonable period in which to repay the maximum amount of *credit* available, have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the *credit limit*; and
 - (c) should not use the assumption of the amount necessary to

make only the minimum *repayment* each *month*.

[**Note:** paragraph 4.6 of *ILG*]

- (9) For a *regulated credit agreement* for *running account credit* the *firm* should set the *credit limit* based on the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)* and taking into account the matters in *CONC 5.2.3G*, and, in particular, the information it has on the *customer's* current disposable income taking into account any reasonably foreseeable future changes.

[**Note:** paragraph 4.6 (box) of *ILG*]

- (10) An example of a reasonably foreseeable future change in disposable income which a *firm* should take into account in setting a *credit limit* may include where a *customer* is known to be, or it is reasonably foreseeable that a *customer* is, close to retirement and faces a significant fall in disposable income.

[**Note:** paragraph 4.6 (box) of *ILG*]

- (11) Where a *firm* requests information from a *customer* for its *creditworthiness assessment* or its assessment required by *CONC 5.2.2R(1)* and the information provided by the *customer* is false and the *firm* has no reason to know this is the case, the *firm* should not contravene *CONC 5.2.1R* or *5.2.2R*.

[**Note:** paragraph 4.10 of *ILG*]

- (12) Subject to the relevant legal constraints, *FCA* encourages the sharing between *lenders* of accurate data about the performance of a *customer's* account and the settlement of outstanding debts, as the process of making the assessments in this chapter is assisted by *lenders* registering such data with *credit reference agencies*, in a timely manner.

- 5.3.2 R A *firm* must establish and implement clear and effective policies and procedures to make a reasonable *creditworthiness assessment* or a reasonable assessment required by *CONC 5.2.2R(1)*.

[**Note:** paragraph 4.19 of *ILG*]

- 5.3.3 G Under the procedures required by *CONC 5.3.2R* a *firm* should take adequate steps, insofar as it is reasonable and practicable to do so, to ensure that information (including information supplied by the *customer*) on an application for *credit* relevant to a *creditworthiness assessment* or an assessment required by *CONC 5.2.2R(1)* is complete and correct.

[**Note:** paragraph 4.29 of *ILG*]

Unfair business practices: lenders

- 5.3.4 R A *firm* must not base its *creditworthiness assessment*, or its assessment required under *CONC 5.2.2R(1)*, primarily or solely on the value of any *security* provided by the *customer*, but this *rule* does not apply in relation to

a *regulated credit agreement* under which the *firm* takes an article in *pawn* and the *customer's* liability is limited to the value of the article plus interest on the *credit* and there are no additional charges.

- 5.3.5 R A *firm* must not advise or encourage a *customer* to enter into a *regulated credit agreement* for an amount of *credit* higher than the *customer* initially requested if the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)* indicates that repayment of the higher amount would not be *sustainable* or the *firm* ought reasonably to suspect that that is the case.

[**Note:** paragraph 4.28 of *ILG*]

- 5.3.6 R A *firm* must not complete some or all of those parts of an application for *credit* under a *regulated credit agreement* intended to be completed by the *customer*, without the consent of the *customer*, unless the *customer* is permitted to check the application before signing the agreement.

[**Note:** paragraph 4.30 of *ILG*]

- 5.3.7 R A *firm* must not accept an application for *credit* under a *regulated credit agreement* where the *firm* knows or ought reasonably to suspect that the *customer* has not been truthful in completing the application in relation to information supplied by the *customer* relevant to the *creditworthiness assessment* or the assessment required by *CONC 5.2.2R(1)*.

[**Note:** paragraph 4.31 of *ILG*]

- 5.3.8 G An example of where a *firm* ought reasonably to suspect that the *customer* has not been truthful may be that the information supplied by the *customer* concerning income or employment status is clearly inconsistent with other available information.

5.4 Conduct of business: credit brokers

Application

- 5.4.1 R This section applies to a *firm* with respect to *credit broking*.

Conduct of business

- 5.4.2 R (1) In giving explanations or advice, or in making recommendations, a *firm* must pay due regard to the *customer's* needs and circumstances.
- (2) In complying with (1) a *firm* must pay due regard to whether the *credit* product is affordable and whether there are any factors that the *firm* knows, or reasonably ought to know, that may make the product unsuitable for that *customer*.

[**Note:** paragraphs 4.32 to 4.36 of *CBG*]

- 5.4.3 R A *firm* which undertakes to search the product market or a part of it before effecting an introduction must, before doing so, search the product market

to the extent stated to the *customer*.

[Note: paragraph 4.41j of *CBG*]

5.5 Creditworthiness assessment: P2P agreements

Application

- 5.5.1 R This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a prospective *borrower* under a *P2P agreement*.
- 5.5.2 G (1) This section contains *rules* that apply to the *person* operating the electronic system that facilitates *persons* becoming *lenders* and *borrowers* under *P2P agreements*, in contrast to *CONC 5.2* which applies to the *lender*.
- (2) A *P2P agreement* may also be a *credit agreement* or a *regulated credit agreement* in which case applicable provisions of the *CCA* or *CONC* will apply to such agreements. The extent to which *CCA* provisions apply to a *lender* will depend largely on whether the *lender* makes the *credit agreement* in the course of carrying on a business.

Creditworthiness assessment

- 5.5.3 R (1) Before a *P2P agreement* is made, a *firm* must undertake an assessment of the creditworthiness of the prospective *borrower*.
- (2) A *firm* carrying out the assessment in (1) must consider:
- (a) the potential for the commitments under the *P2P agreement* to adversely impact the prospective *borrower's* financial situation, taking into account the information of which the *firm* is aware at the time the *P2P agreement* is to be made; and
- (b) the ability of the prospective *borrower* to make *repayments* as they fall due over the life of the *P2P agreement*, or for such an agreement which is an *open-end agreement*, to make *repayments* within a reasonable period.
- (3) A creditworthiness assessment must be based on sufficient information obtained from
- (a) a prospective *borrower*, where appropriate; and
- (b) a *credit reference agency*, where necessary.
- (4) This *rule* does not apply to an agreement under which a *person* takes

an article in *pawn*.

- 5.5.4 R Where *CONC 5.5.3R* applies to a *firm*, the *firm* must comply with *CONC 5.3.2R*, *5.3.4R*, *5.3.5R*, *5.3.6R* and *5.3.7R* to the same extent as if it were the *lender* under an agreement to which those *rules* apply and should take into account the *guidance* in *CONC 5.3* to the same extent, and should also take into account *CONC 5.2.3G* and *5.2.4G* treating them as guidance on *CONC 5.5.3R*.
- 5.5.5 R A *firm* must consider sufficient information to enable it to make a reasonable assessment required by *CONC 5.5.3R*.
[**Note:** paragraph 4.21 of ILG]
- 5.5.6 R Before a *P2P agreement* is entered into under which a *person* takes an article in *pawn*, the *firm* must:
- (1) undertake the assessment referred to in *CONC 5.2.2R(1)* of the prospective *borrower*; and
 - (2) comply with *CONC 5.3.2R*, *5.3.4R*, *5.3.5R*, *5.3.6R* and *5.3.7R* to the same extent as if it were the *lender* under an agreement to which those *rules* apply, and should also take into account the *guidance* in *CONC 5.2.3G* and *5.2.4G* and *CONC 5.3* to the same extent.

6 Post contractual requirements

6.1 Application

- 6.1.1 R This chapter applies, unless otherwise stated in a *rule*, or in relation to a *rule*, to a *firm* with respect to *consumer credit lending*.
- 6.1.2 G
- (1) *CONC 6.2*, *6.5* and *6.7* apply to *firms* with respect to *consumer credit lending*.
 - (2) *CONC 6.3* applies to current account agreements that would be *regulated credit agreements* if the *customer* overdraws on the account.
 - (3) *CONC 6.4* and *CONC 6.6* apply to *firms* which carry on *consumer credit lending* in relation to *regulated credit agreements* and *firms* which carry on *consumer hiring* in relation to *regulated consumer hire agreements*.
 - (4) *CONC 6.7.17R* to *CONC 6.7.26R* also apply to *firms* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* in relation to a *P2P agreement*.
 - (5) *CONC 6.8* applies to *credit broking*.

6.2 Assessment of creditworthiness: during agreement

- 6.2.1 R (1) Before significantly increasing:
- (a) the amount of *credit* to be provided under a *regulated credit agreement*; or
 - (b) a *credit limit* for *running-account credit* under a *regulated credit agreement*;
- the *lender* must undertake an assessment of the *customer's* creditworthiness.
- [**Note:** section 55B(2) of *CCA*]
- (2) A *firm* carrying out the assessment in (1) must consider:
- (a) the potential for the commitments under the *regulated credit agreement* to adversely impact the *customer's* financial situation, taking into account the information of which the *firm* is aware at the time that the increase in (1) is to be granted; and
 - (b) the ability of the *customer* to make *repayments* as they fall due over the life of the *regulated credit agreement*, or for such an agreement which is an *open-end agreement*, to make *repayments* within a reasonable period.
- [**Note:** paragraphs 4.1 and 4.3 of *ILG*]
- (3) A creditworthiness assessment must be based on sufficient information obtained from:
- (a) the *customer*, where appropriate, and
 - (b) a *credit reference agency*, where necessary.
- (4) This *rule* does not apply to:
- (a) an agreement secured on *land*; or
 - (b) an agreement under which a *person* takes an article in *pawn*.
- (5) This *rule* does not apply, except to the agreements in (6), to:
- (a) a *non-commercial agreement*;
 - (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account;
 - (c) a *small borrower-lender-supplier agreement* for *restricted-*

use credit.

- (6) The agreements referred to in (5) and therefore to which this *rule* does apply are:
- (a) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account which is an *authorised business overdraft agreement* or an *authorised non-business overdraft agreement*; or
[**Note:** section 74(1B)/(1C) of CCA]
 - (b) a *borrower-lender agreement* enabling the *borrower* to overdraw on a current account which would be an *authorised non-business overdraft agreement* but for the fact that the *credit* is not repayable on demand within three *months*.
[**Note:** section 74(1D) of CCA].

6.2.2 R Where *CONC* 6.2.1R applies to a *firm*:

[**Note:** paragraph 4.2 of *ILG*]

- (1) the *firm* must comply with *CONC* 5.3.2R, 5.3.4R, 5.3.5R, 5.3.6R and 5.3.7R
- (2) the *rules* in *CONC* 5.3 referred to in (1) apply with the modifications necessary to take into account that *CONC* 6.2.1R concerns increases in the amount of *credit* and in *credit limits* and when the increase is to take place; and
- (3) the *guidance* in *CONC* 5.3 applies accordingly and *CONC* 5.2.3G and 5.3.4G apply treating them as guidance on *CONC* 6.2.1R.

6.2.3 R A *firm* must consider sufficient information available to it at the time of the increase referred to in *CONC* 6.2.1R to enable it to make a reasonable assessment required by that *rule*.

[**Note:** paragraph 4.21 of *ILG*]

6.3 Information to be provided on a current account agreement and on significant overdrawing

Application

6.3.1 R This section applies:

- (1) to a *firm* with respect to *consumer credit lending*; and
- (2) where a *firm* has entered into a current account agreement where:
 - (a) there is a possibility that the account-holder may be allowed

to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit; and

- (b) if the account-holder did so, this would be a *regulated credit agreement*.

- 6.3.2 R *CONC 6.3.3R* does not apply where the overdraft or excess would be secured on *land*.

Current account information

- 6.3.3 R A *firm* must provide to the account-holder, in writing, the information in *CONC 4.7.2R(2)* at least annually.

[**Note:** section 74A of *CCA* (partial implementation of article 18 of the *Consumer Credit Directive*)]

Information to be provided on significant overdrawn without prior arrangement

- 6.3.4 R (1) A *firm* must inform the account-holder in writing of the matters in (2) without delay where:
- (a) the account-holder overdraws on the current account without a pre-arranged overdraft, or exceeds a pre-arranged overdraft limit, for a period exceeding one *month*;
 - (b) the amount of that overdraft or excess is significant throughout that period;
 - (c) the overdraft or excess is a *regulated credit agreement*; and
 - (d) the account-holder has not been informed in writing of the matters in (2) within that period.
- (2) The matters in (1) are:
- (a) the fact that the account is overdrawn or the overdraft limit has been exceeded;
 - (b) the amount of that overdraft or excess;
 - (c) the rate of interest charged on it; and
 - (d) any other charges payable by the *customer* in relation to it (including any penalties and any interest on those charges).
- (3) For the purposes of (1)(b) the amount of the overdraft or excess is significant if:
- (a) the account-holder is liable to pay a charge for which he would not otherwise be liable; or
 - (b) the overdraft or excess is likely to have an adverse effect on

the *customer's* ability to receive further *credit* (including any effect on the information about the *customer* held by a *credit reference agency*); or

- (c) it otherwise appears significant, having regard to all the circumstances.
- (4) Where the overdraft or excess is secured on *land*, (1)(a) is to be read as if the reference to one *month* were a reference to three *months*.

[**Note:** section 74B of CCA]

[**Note:** article 18 of the *Consumer Credit Directive*]

6.4 Appropriation of payments

Application

6.4.1 R This section applies to:

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *consumer hiring*.

Appropriation

6.4.2 R (1) Where a *firm* is entitled to payments from the same *customer* in respect of two or more *regulated agreements*, the *firm* must allow the *customer*, on making any payment in respect of those agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum paid by him:

- (a) in or towards the satisfaction of the sum due under any one of the agreements; or
- (b) in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as the *customer* thinks fit.

[**Note:** section 81(1) of CCA]

(2) If the *customer* fails to make any such appropriation where one or more of the agreements is:

- (a) a *hire-purchase agreement* or *conditional sale agreement*; or
- (b) a *consumer hire agreement*; or
- (c) an agreement in relation to which any *security* is provided;

the *firm* must appropriate the payment towards satisfaction of the sums due under the agreements in the proportions which those sums

bear to one another.

[**Note:** section 81(2) of *CCA*]

6.5 Assignment of rights

Application

6.5.1 R This section applies to a *firm* with respect to *consumer credit lending*.

Notice of assignment

6.5.2 R (1) Where rights of a *lender* under a *regulated credit agreement* are assigned to a *firm*, that *firm* must arrange for notice of the assignment to be given to the *customer*:

(a) as soon as reasonably possible; or

(b) if, after the assignment, the arrangements for servicing the *credit* under the agreement do not change as far as the *customer* is concerned, on or before the first occasion they do.

[**Note:** section 82A of *CCA*]

(2) Paragraph (1) does not apply to an agreement secured on *land*.

(3) A *firm* may assign the rights of a *lender* under a *regulated credit agreement* to a third party only if:

- (a) the third party is a *firm*; or
- (b) where the third party does not require *authorisation*, the *firm* has an agreement with the third party which requires the third party to arrange for a notice of assignment in accordance with (1).

[**Note:** article 17 of the *Consumer Credit Directive*]

6.6 Pawn broking: conduct of business

Application

6.6.1 R This section applies to:

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *consumer hiring*.

Failure to supply copies of pledge agreement etc

- 6.6.2 G Sections 62 to 64 and 114(1) of the *CCA* continue to apply to a *regulated agreement* under which a *person* takes any article in *pawn*. A *firm* which fails to observe its obligations under those provisions may be subject to disciplinary action by the *FCA*.

[**Note:** section 115 of *CCA*]

Pawn records: relating to articles under a regulated credit agreement

- 6.6.3 R A *firm* which takes any article in *pawn* under a *regulated credit agreement* must keep such books or other records as are sufficient to show and explain readily at any time all dealings with the article, including:

- (1) the taking of the article in *pawn*;
- (2) any redemption of the article; and
- (3) where the article has become realisable by the *firm*, any sale of the article under section 121(1) of the *CCA*.

[**Note:** regulation 2(1) of SI 1983/1565]

- 6.6.4 R Without prejudice to the generality of *CONC* 6.6.3R, the entries in the books or other records in respect of the dealings mentioned in *CONC* 6.6.3R(1) to (3) must contain the information in *CONC* 6.6.7R to *CONC* 6.6.9R.

[**Note:** regulation 2(2) of SI 1983/1565]

- 6.6.5 R Where the entries in relation to any article taken in *pawn* in *CONC* 6.6.4R are not shown together as a whole but are shown in separate places, then in each place where entries are made the record must show:

- (1) the date and the number or other reference of the agreement under which the article was taken in *pawn* and, where separate from any document embodying the agreement, the number or other reference of the pawn-receipt;
- (2) the date on which the article was taken in *pawn*; and
- (3) the name of the *customer*.

[**Note:** regulation 2(3) of SI 1983/1565]

- 6.6.6 R A *firm* must retain the books or other records required by *CONC* 6.6.3R at least until the expiration of whichever is the longer of the following periods:

- (1) five years from the date on which the article was taken in *pawn*; or
- (2) where an article has become realisable by the *firm*, three years from the date of sale under section 121(1) of the *CCA* or the redemption of the article, as the case may be.

[**Note:** regulation 2(4) of SI 1983/1565]

Information to be kept by a person who takes any article in pawn

- 6.6.7 R The entries in the books or other records, in relation to the taking of the article in *pawn*, must contain the following information:
- (1) the date and the number or other reference of the agreement under which the article was taken in *pawn*, and of the pawn-receipt if separate, sufficient to identify it or them;
 - (2) the date on which the article was taken in *pawn*;
 - (3) the name and a postal address and, where appropriate, other address of the *customer*;
 - (4) the description that appears in the pawn-receipt of the article taken in *pawn*;
 - (5) the amount of the *credit* secured by the *pledge*;
 - (6) the date of the end of the redemption period; and
 - (7) the rate of interest, and the amount or rate of any other charges for *credit*, as provided for in the agreement under which the article was taken in *pawn*.
- [**Note:** paragraph 1 of Schedule to SI 1983/1565]
- 6.6.8 R The entries in the books or other records in relation to any redemption of the article must contain the date of the redemption.
- [**Note:** paragraph 2 of Schedule to SI 1983/1565]
- 6.6.9 R The entries in the books or other records, where the article has become realisable by the *firm*, in relation to any sale of the article under section 121(1) of the *CCA*, must contain the following information:
- (1) the date of the sale;
 - (2) where the article was sold by auction, the name and a postal address of the auctioneer;
 - (3) where the article was not sold by auction, the postal address of the premises at which the sale took place;
 - (4) the gross amount realised;
 - (5) the itemised expenses, if any, of the sale;
 - (6) where (5) applies, the net proceeds of sale, being the difference between the gross amount in (4) and the total amount of the expenses in (5);
 - (7) the amount which would have been payable under the agreement

under which the article was taken in *pawn* if the article had been redeemed on the date of the sale;

- (8) where the net proceeds of sale are not less than the sum which, if the article taken in *pawn* had been redeemed on the date of the sale, would have been payable for its redemption, the amount of any surplus payable to the *customer*;
- (9) where (8) does not apply, the amount by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the article taken in *pawn* on the date of the sale, being the amount for which the *customer* remains liable under section 121(4) of the *CCA*;
- (10) the date on which any surplus in (8) was paid to the *customer*;
- (11) the date on which any amount in (9) for which the *customer* remained liable under section 121(4) of the *CCA* was received from the *customer*.

[**Note:** paragraph 3 of Schedule to SI 1983/1565]

6.7 Post contract: business practices

Application

- 6.7.1 R (1) This section applies to a *firm* with respect to *consumer credit lending*.
- (2) *CONC 6.7.17R* to *CONC 6.7.26R* also apply to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement* and references in those provisions to a *firm* refinancing an agreement refer to any action taken by an *operator of an electronic system in relation to lending* which has the result that a *P2P agreement* is refinanced.

Business practices

- 6.7.2 R A *firm* must monitor a *customer's* repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.
[**Note:** paragraph 6.2 of *ILG*]
- 6.7.3 G The action referred to in *CONC 6.7.2R* should generally include:
 - (1) notifying the *customer* of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and
[**Note:** paragraph 6.16 of *ILG*]
 - (2) providing contact details for *not-for-profit debt advice bodies*.

[Note: paragraph 6.2 (box) of *ILG*]

Credit card and store card requirements

6.7.4 R A *firm* must first allocate a *repayment* to the debt subject to the highest rate of interest for:

- (1) the outstanding balance on a credit card; or
- (2) the outstanding balance on a store card; or
- (3) a credit card or a store card, in relation to which there is a *fixed-sum credit* element, to *repayments* beyond those required to satisfy the fixed instalments.

[Note: paragraph 6.3 of *ILG*]

6.7.5 R (1) A *firm* must set the minimum required *repayment* under a *regulated credit agreement* for a credit card or a store card at an amount equal to at least that amount which repays the interest, fees and charges that have been applied to the *customer's* account, plus one percentage of the amount outstanding.

[Note: paragraph 6.4 of *ILG*]

- (2) Where (1) applies and a *firm* applies interest to a period of more than one *month*, for the purpose of calculating the amount of the interest part of the minimum required *repayment* the *firm* may disregard any interest applied in respect of a period prior to the period of the statement in question.

[Note: paragraph 6.4 (box) of *ILG*]

- (3) Paragraph (1) applies to agreements made on or after 1 April 2011.

6.7.6 R A *firm* under a *regulated credit agreement* for a credit card or a store card must provide a *customer* with the option to pay any amount they choose (equal to or more than the minimum required repayment but less than the full outstanding balance) on a regular basis, when making automated *repayments*.

[Note: paragraph 6.5 of *ILG*]

6.7.7 R A *firm* must not increase, nor offer to increase, the *customer's credit limit* on a credit card or store card where:

- (1) the *firm* has been advised that the *customer* does not wish to have any *credit limit* increases; or
- (2) a *customer* is at risk of financial difficulties.

[Note: paragraphs 6.6 and 6.7 of *ILG*]

6.7.8 R A *firm* under a *regulated credit agreement* for a credit card or a store card

must:

- (1) permit a *customer* at any time to reduce or decline offers to increase the *credit limit*; and
- (2) permit a *customer* to decline to receive offers of *credit limit* increases.

[**Note:** paragraphs 6.8 and 6.9 of *ILG*]

- 6.7.9 R (1) A *firm* under a *regulated credit agreement* for a credit card or store card must notify the *customer* at least 30 days before a *credit limit* increase under the agreement comes into effect. [**Note:** paragraph 6.17 of *ILG*]
- (2) Paragraph (1) does not apply where a *customer* requests a temporary *credit limit* increase to deal with an emergency situation and, where *CONC* 6.2.1R applies, the *firm* carries out the required creditworthiness assessment in relation to any such increase.
- 6.7.10 R Where a *customer* is at risk of financial difficulties, a *firm* under a *regulated credit agreement* for a credit card or a store card must, other than where a promotional rate of interest ends, not increase the rate of interest under the agreement.
- [**Note:** paragraph 6.10 of *ILG*]
- 6.7.11 G For the purposes of *CONC* 6.7.7R and 6.7.10R a *customer* is at risk of financial difficulties if the *customer*:
- (1) is two or more payments in arrears; or
 - (2) has agreed a repayment plan with the *firm* in question; or
 - (3) is in serious discussion with a *firm* which carries on *debt counselling* with a view to entering into a *debt management plan* and the *firm* has been notified of this fact.
- [**Note:** paragraph 6.10 (box) of *ILG*]
- 6.7.12 R (1) A *firm* under a *regulated credit agreement* for a credit card or store card must notify a *customer* at least 30 days before an increase in the rate of interest under the agreement comes into effect.
- [**Note:** paragraph 6.18 of *ILG*]
- (2) Paragraph (1) does not apply in the following cases where in relation to an agreement:
- (a) the interest rate is set to directly track the movement in an external index (such as a base rate), which was adequately explained under *CONC* 4.2.15R and was clearly stated in the agreement; or

(b) the period of a promotional interest rate has come to an end.

6.7.13 R Where a *firm* proposes to exercise a power under a *regulated credit agreement* for a credit card or store card to increase the interest rate, the *firm* must:

- (1) permit the *customer* sixty days, from the date of the *firm's* notice of the proposed increase during which period the *customer* may give notice to the *firm* requiring it to close the account;
- (2) permit the *customer* to pay off the outstanding balance at the rate of interest before the proposed increase and over a reasonable period; and
- (3) give notice to the *customer* of the rights in (1) and (2).

[**Note:** paragraphs 6.11 and 6.19 of *ILG*]

Interest rate variations

6.7.14 R Where a *firm* has a right to increase the interest rate under a *regulated credit agreement*, the *firm* must not increase the interest rate unless there is a valid reason for doing so.

[**Note:** paragraph 6.20 of *ILG*]

6.7.15 G Examples of valid reasons for increasing the rate of interest in *CONC* 6.7.14R include:

- (1) recovering the genuine increased costs of funding the provision of *credit* under the agreement; and
- (2) a change in the risk presented by the *customer* which justifies the change in the interest rate, which would not generally include missing a single *repayment* or failing to repay in full on one or two occasions

[**Note:** paragraph 6.20 (box) of *ILG*]

6.7.16 R Where a *firm* increases a rate of interest based on a change in the risk presented by the *customer*, the *firm* must:

- (1) notify the *customer* that the rate of interest has been increased based on a change in risk presented by the *customer*; and
- (2) if requested by the *customer* provide a suitable explanation which may be a generic explanation for such increases.

[**Note:** paragraph 6.20 (box) of *ILG*]

Rules on refinancing: general

6.7.17 R (1) In *CONC* 6.7.18R to *CONC* 6.7.23R “refinance” means to extend, or purport to extend, the period over which one or more *repayment* is to

be made by a *customer* whether by:

- (a) agreeing with the *customer* to replace, vary or supplement an existing *regulated credit agreement*;
 - (b) exercising a contractual power contained in an existing *regulated credit agreement*; or
 - (c) other means, for example, granting an indulgence or waiver to the *customer*.
- (2) “Exercise forbearance” means to refinance a *regulated credit agreement* where the result is that no interest accrues at any time in relation to that agreement or any which replaces, varies or supplements it from the date of the refinancing and either:
- (a) there is no charge in connection with the refinancing; or
 - (b) the only additional charge is a reasonable estimate of the actual and necessary cost of the additional administration required in connection with the refinancing.
- (3) The term “refinance” within paragraph (1) does not include where, under a *regulated credit agreement* repayable in instalments, a *customer* requests a change in the regular payment date and as a result there is no charge or additional interest in connection with the change.

6.7.18 R A *firm* must not encourage a *customer* to refinance a *regulated credit agreement* if the result would be the *customer’s* commitments are not *sustainable*.

[Note: paragraph 4.27 of *ILG*]

6.7.19 R A *firm* must not refinance a *customer’s* existing *credit* with the *firm* (other than by exercising forbearance), unless:

- (1) the *firm* does so at the *customer’s* request or with the *customer’s* consent; and
- (2) the *firm* reasonably believes that it is not against the *customer’s* best interests to do so.

[Note: paragraph 6.24 of *ILG*]

Rules on refinancing: high-cost short-term credit

6.7.20 R Before a *firm* agrees to refinance *high-cost short-term credit*, it must:

- (1) give or send an information sheet to the *customer*; and
- (2) where reasonably practicable to do so, bring the sheet to the attention of the *customer* before the refinance;

in the form of the arrears information sheet issued by the *FCA* referred to in section 86A of the *CCA* with the following modifications:

(3) for the title and first sentence of the information sheet substitute:

“High-cost short-term loans

Failing to repay on time

Think carefully – rolling over or extending your loan may not be the best option and may make things worse.”; and

(4) for the bullet points substitute: “

- **Think carefully before borrowing more.** Borrowing more money is likely to worsen your situation.
- **Work out how much you owe.** To do this, you will need to make a list of all the organisations you owe money to. A debt adviser can help you
- **Put priority debts first.** Some debts are more urgent than others because the consequences of not paying them can be more serious than for other debts, for example, mortgage, rent, council tax/ rates, or gas or electricity arrears. A debt adviser can help you to budget to keep your finances under control

Discuss options with your lender

- If you are having trouble paying back on time talk to your lender who can suggest ways to repay and make sure it is affordable for you.
- If you don't, you may quickly face increased costs from interest or charges. Missed payments could affect your credit rating and make it more difficult to get credit in future.

Get free help and advice

- People that access advice resolve their issues more quickly than those that don't and hundreds of thousands get free debt advice every year.
- Contact one of these organisations for free debt advice.”

(5) in relation to an arrears sheet to be used by an *operator of an electronic system in relation to 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 title “Discuss options with your lender” substitute

“Discuss options with your peer to peer lending platform (P2P platform)”;

- (c) for the bullet point which begins “If you are having trouble ...” substitute:

“If you are having trouble paying back on time talk to your P2P platform who can suggest ways to repay and make sure it is affordable for you.”.

- 6.7.21 G A *firm* should not refinance *high-cost short-term credit* where to do so is *unsustainable* or otherwise harmful.

[Note: paragraph 6.25 of *ILG*]

- 6.7.22 G A *firm* should not allow a *customer* to enter into consecutive agreements with the *firm* for *high-cost short-term credit* if the cumulative effect of the agreements would be that the *total amount payable* by the *customer* is *unsustainable*.

[Note: paragraph 6.25 (box) of *ILG*]

- 6.7.23 R A *firm* must not refinance *high-cost short-term credit* (other than by exercising forbearance) on more than two occasions.

Continuous payments authority: post agreement obligations

- 6.7.24 R A *firm* must not amend the terms of a *continuous payment authority* without first obtaining the *customer's* consent, after having fully explained to the *customer* the reason for the amendment.

[Note: paragraph 3.9miii of *DCG*]

- 6.7.25 R *CONC* 6.7.24R does not preclude the *firm* from:

- (1) making amendments pursuant to a variation clause to which the *customer* has previously given consent, after it was fully explained to the *customer* the reason for the amendment; or

- (2) reducing or waiving payments unilaterally, for example, under a repayment plan, provided that this is explained to the *customer*.

[Note: paragraph 3.9miii of *DCG*]

- 6.7.26 R A *firm* must use the correct category code and identifier when presenting a payment request to the *payment service provider*.

[Note: paragraph 3.9miii of *DCG*]

6.8 Post contract business practices credit brokers

Application

6.8.1 R This section applies to a *firm* with respect to *credit broking*.

Business practices

6.8.2 G Where a *firm* takes on responsibility for giving information to a *customer* or receiving information from a *customer* in accordance with provisions of the *CCA* (for example, supplying a copy of an executed *regulated credit agreement* under section 61A of the *CCA*) the *firm* should ensure it is familiar with the relevant statutory requirements and has adequate system and procedures in place to comply with the provision in question.

Refunds of brokers' fees

6.8.3 G (1) Under section 155 of the *CCA* an *individual* has a right to a refund of the *firm's* fee (less £5) (or for that fee not to be payable) where, following an introduction to a source of *credit* or of bailment (or in Scotland of hire), the *individual* has not entered into an agreement to which section 155 applies within six *months* of an introduction.

[Note: paragraph 6.1 of *CBG*]

(2) It is immaterial for the purposes of section 155 of the *CCA* why no agreement has been entered into (for example, an *individual* should be entitled to a refund where the *individual* decides for any reason not to enter into an agreement within the relevant time period).

[Note: paragraph 6.2 of *CBG*]

(3) Section 155 does not apply where the introduction is for a *regulated mortgage contract* or a *home purchase plan* and the person charging the fee is an *authorised person* or an *appointed representative*. Arranging and advising in relation to *regulated mortgages contracts* and *regulated home purchase plans* are *regulated activities* under the *Regulated Activities Order* and carrying on those activities would require *permissions* covering those activities.

[Note: paragraph 6.4 of *CBG*]

(4) In relation to a *credit agreement* the refund would apply to any sum which is an amount that is or would enter in to the *total charge for credit* paid or payable to or via the *credit broker* whether or not the *firm* describes it as a fee or commission.

[Note: paragraphs 6.11 and 6.13 of *CBG*]

(5) Where an *individual* withdraws from a *regulated credit agreement* under section 66A of the *CCA* or cancels a cancellable agreement (see section 67 of the *CCA*) under section 69 of the *CCA* the agreement is treated as never have been entered into and hence the period referred to in section 155 continues to apply in these circumstances.

[Note: paragraph 6.10 of *CBG*]

- 6.8.4 R Where section 155 of the *CCA* applies, a *firm* must respond to a request for a refund.
[**Note:** paragraph 6.17 of *CBG*]
- 6.8.5 G (1) An *individual* does not need to refer to the right under section 155 of the *CCA* in order to be entitled to a refund.
- (2) A *firm* should respond promptly to a request for a refund.
- (3) In circumstances where *individuals* request refunds and the *firm* knows, or ought to know, that agreements to which section 155 applies would not be entered into within six *months*, the *firm* should not make the *individuals* wait for the six-month period to elapse before making the refund.
[**Note:** paragraphs 6.17 and 6.18 of *CBG*]

7 Arrears, default and recovery (including repossessions)

7.1 Application

Who? What?

- 7.1.1 R This chapter applies, unless otherwise stated in or in relation to a *rule*, to:
- (1) a *firm* with respect to *consumer credit lending*;
 - (2) a *firm* with respect to *consumer hiring*;
 - (3) a *firm* with respect to *operating an electronic system in relation to lending*, in relation to a *borrower* under a *P2P agreement*;
 - (4) a *firm* with respect to *debt collecting*.
- 7.1.2 G The following sections provide otherwise for application:
- (1) *CONC 7.12* (lenders' responsibilities in relation to debt) applies only to *firms* in respect of *consumer credit lending*;
 - (2) *CONC 7.17* to *CONC 7.19* apply only to *firms operating electronic systems in relation to lending* in relation to *borrowers* under *P2P agreements* as set out in those sections.
- 7.1.3 G (1) In accordance with *CONC 1.2.2R* *firms* must ensure that their employees and agents comply with *CONC* and must take reasonable steps to ensure that other *persons* acting on the *firm's* behalf act in accordance with *CONC*.
- (2) The *rule* in *CONC 1.2.2R* is particularly important in relation to the requirements in *CONC 7*, for example, in dealing with an *individual*

from whom the *person* referred to in the *rule* is seeking to collect a debt.

- (3) In this chapter the expression “arrears” includes any shortfall in one or more payment due from a *customer* under an agreement to which the chapter applies.

7.2 Clear effective and appropriate arrears policies and procedures

Arrears policies

- 7.2.1 R A *firm* must establish and implement clear, effective and appropriate policies and procedures for:
- (1) dealing with *customers* whose accounts fall into arrears;
[Note: paragraph 7.2 of *ILG*]
 - (2) the fair and appropriate treatment of *customers*, who the *firm* understands or reasonably suspects to be particularly vulnerable.
[Note: paragraphs 7.2 and 7.2(box) of *ILG* and 2.2 (box) of *DCG*]
- 7.2.2 G *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.
[Note: paragraph 2.2 (box) of *DCG*]
- 7.2.3 G In developing procedures and policies for dealing with *customers* who may not have the mental capacity to make financial decisions, *firms* may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines “Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt”.
[Note: paragraph 3.7r (box) of *DCG*]

7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors

- 7.3.1 G (1) In relation to *debt collecting* and *debt administration*, the definition of *customer* refers to an *individual* from whom the payment of a debt is sought; this would include where a *firm* mistakenly treats an *individual* as the *borrower* under an agreement and mistakenly or wrongly pursues the *individual* for a debt.
[Note: paragraph 1.12 of *DCG*]
- (2) In relation to *debt collecting* and *debt administration*, the definitions of *customer* and *borrower* are given extended meanings to include, as well as those other people they generally include, a person providing a guarantee or indemnity under a *credit agreement* and also a person to

whom rights and duties are under the agreement passed by assignment or operation of law. This reflects article 39M of the *Regulated Activities Order*.

Dealing fairly with customers in arrears or default

- 7.3.2 G When dealing with *customers* in default or in arrears difficulties a *firm* should pay due regard to its obligations under *Principle 6* (Customers' interests) to treat its *customers* fairly.

[**Note:** paragraphs 7.12 of *ILG* and 2.2 of *DCG*]

Forbearance and due consideration

- 7.3.3 G Where a *customer* under a *regulated credit agreement* fails to make an occasional payment when it becomes due, a *firm* should, in accordance with *Principle 6*, allow for such unmade payments to be made within the original term of the agreement unless:

- (1) the *firm* reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the *total amount payable* to be *unsustainable* or otherwise cause a *customer* to be in financial difficulties; or

[**Note:** paragraph 4.7 of *ILG*]

- (2) the *firm* reasonably believes that terminating the agreement will mitigate such adverse consequences for the *customer* and before terminating the agreement it explains this to the *customer*.

- 7.3.4 R A *firm* must treat *customers* in default or in arrears difficulties with forbearance and due consideration.

[**Note:** paragraphs 7.3 and 7.4 of *ILG* and 2.2 of *DCG*]

- 7.3.5 G Examples of treating a *customer* with forbearance would include the *firm* doing one or more of the following, as may be relevant in the circumstances:

- (1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a *customer* provides evidence of financial difficulties and is unable to meet *repayments* as they fall due or is only able to make token *repayments*, where in either case the level of debt would continue to rise if interest and charges continue to be applied);

[**Note:** paragraph 7.4 (box) of *ILG*]

- (2) allowing deferment of payment of arrears:

- (a) where immediate payment of arrears may increase the *customer's repayments* to an *unsustainable* level; or

- (b) provided that doing so does not make the term for the

repayments unreasonably excessive;

- (3) accepting token payments for a reasonable period of time in order to allow a *customer* to recover from an unexpected income shock, from a *customer* who demonstrates that meeting the *customer's* existing debts would mean not being able to meet the *customer's* priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).

- 7.3.6 G Where a *customer* is in default or in arrears difficulties, a *firm* should allow the *customer* reasonable time and opportunity to repay the debt.
[Note: paragraph 2.2 of DCG]
- 7.3.7 G Where appropriate, a *firm* should direct a *customer* in default or in arrears difficulties to sources of free and independent debt advice.
[Note: paragraph 2.2 of DCG]
- 7.3.8 G An example of where a *firm* is likely to contravene *Principle 6* and *CONC 7.3.4R* is where the *firm* does not allow for alternative, affordable payment amounts to repay the debt due in full, where the *customer* is in default or arrears difficulties and the *customer* makes a reasonable proposal for repaying the debt or a *debt counsellor* or another *person* acting on the *customer's* behalf makes such a proposal.
[Note: paragraphs 7.16 of ILG and 3.7j of DCG]
- 7.3.9 R A *firm* must not operate a policy of refusing to negotiate with a *customer* who is developing a repayment plan.
[Note: paragraph 3.9d (box) of DCG]
- 7.3.10 R A *firm* must not pressurise a *customer*:
- (1) to pay a debt in one single or very few *repayments* or in unreasonably large amounts, when to do so would have an adverse impact on the *customer's* financial circumstances;
[Note: paragraph 7.18 of ILG]
- (2) to pay a debt within an unreasonably short period of time; or
[Note: paragraphs 3.7i of DCG and 7.18 of ILG]
- (3) to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.
[Note: paragraph 3.7b of DCG]
- 7.3.11 R A *firm* must suspend the active pursuit of recovery of a debt from a *customer* for a reasonable period where the *customer* informs the *firm* that a *debt counsellor* or another *person* acting on the *customer's* behalf or the *customer* is developing a repayment plan.

[Note: paragraphs 7.12 of *ILG* and 3.7m of *DCG*]

- 7.3.12 G A “reasonable period” in *CONC* 7.3.11R should generally be for thirty days where there is evidence of a genuine intention to develop a plan and the *firm* should consider extending the period for a further thirty days where there is reasonable evidence demonstrating progress to agreeing a plan.

[Note: paragraphs 7.12 (box) *ILG* and 3.7m of *DCG*]

- 7.3.13 G A *firm* seeking to recover debts should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

[Note: paragraphs 7.16 (box) of *ILG* and 3.7k of *DCG*]

Proportionality

- 7.3.14 R (1) A *firm* must not take disproportionate action against a *customer* in arrears or default.

[Note: paragraphs 7.14 (box) of *ILG* and 3.7t of *DCG*]

- (2) In accordance with (1) a *firm* must not, in particular, apply to court for an order for sale or submit a bankruptcy petition, without first having fully explored any more proportionate options.

[Note: paragraph 7.14 (box) of *ILG*]

- 7.3.15 G A *firm* should not make undue, excessive or otherwise unfair use of statutory demands (within the meaning of section 268 of the Insolvency Act 1986) when seeking to recover a debt from a *customer*.

[Note: paragraphs 7.10 of *ILG* and 3.7n of *DCG*]

Enforcement of debts

- 7.3.16 G A *firm* should not take steps to enforce a debt if it is aware that the *customer* is subject to a bankruptcy order (or in Scotland where sequestration is awarded in relation to the *customer*), a debt relief order or an individual voluntary arrangement (or, in Scotland, a protected trust deed or a Debt Arrangement Scheme).

[Note: paragraph 3.9h of *DCG*]

- 7.3.17 R A *firm* must not take steps to repossess a *customer's* home other than as a last resort, having explored all other possible options.

[Note: paragraphs 7.14 of *ILG*, 3.7t of *DCG* and 6.3 of *SCLG*]

- 7.3.18 R A *firm* must not threaten to commence court action, including an application for a charging order or (in Scotland) an inhibition or an order for sale, in order to pressurise a *customer* in default or arrears difficulties to pay more than they can reasonably afford.

[Note: paragraphs 7.14 of *ILG* and 3.7i (box) of *DCG*]

- 7.3.19 G *Firms* seeking to recover debts under *regulated credit agreements* secured by

second or subsequent charges in England and Wales should have regard to the requirements of the relevant pre-action protocol (PAP) issued by the Civil Justice Council. The aims of the PAP are to ensure that a *firm* and a *customer* act fairly and reasonably with each other in resolving any matter concerning arrears, and to encourage more pre-action contact in an effort to seek agreement between the parties on alternatives to repossession. The Pre-action Protocol on Possession Proceedings applies to all mortgage repossession cases in Northern Ireland. The Home Owner and Debtor Protection (Scotland) Act 2010 provides for pre-action requirements to be placed on secured *lenders* in Scotland.

[**Note:** paragraphs 7.14 of *ILG* and 3.7s of *DCG*]

7.4 Information on status of debts

- 7.4.1 R A *firm* must provide the *customer* or another *person* acting on behalf of the *customer* with information on the amount of any arrears and the balance owing.

[**Note:** paragraph 3.3f of *DCG*]

- 7.4.2 R Where:

- (1) a *customer* offers a settlement payment lower than the total amount owing; or
- (2) a *lender* under a *regulated credit agreement* or an *owner* under a *regulated consumer hire agreement* decides to stop pursuing a *customer* in respect of a debt arising under the agreement;

and the debt (or part of it) continues to exist notwithstanding the acceptance of the *customer's* offer or the decision to cease to pursue the debt, the *lender* or *owner* must ensure that the continuing existence of the debt and the possibility of the *customer* being pursued by another *firm* who purchases the debt is explained in clear terms to the *customer*.

[**Note:** paragraph 3.3i of *DCG*]

7.5 Pursuing and recovering repayments

- 7.5.1 G (1) Failure to comply with *CONC* 6.5.2R, which sets out when a *firm* must give notice to a *customer* where a *regulated credit agreement* has been assigned to a third party, will be taken into account by the *FCA* in taking decisions about a *firm's permission* or about taking other action.

[**Note:** paragraph 3.7g of *DCG*]

- (2) *CONC* 6.5.2R makes it clear that where arrangements for servicing the *credit* change at the time of the assignment of a *regulated credit agreement*, notice must be given to the *customer* as soon as reasonably

possible. A *firm* should give notice as required under that *rule* in order that any change should not adversely impact on a *customer's* existing repayment arrangements. In addition, if arrangements for servicing the debt otherwise change so far as the *customer* is concerned, the *firm* should notify the *customer* on or before that change.

[**Note:** paragraph 3.7h of *DCG*]

- 7.5.2 R A *firm* must not pursue an *individual* whom the *firm* knows or believes might not be the *borrower* or *hirer* under a *credit agreement* or a *consumer hire agreement*.

[**Note:** paragraph 3.5f of *DCG*]

- 7.5.3 R A *firm* must not ignore or disregard a *customer's* claim that a debt has been settled or is disputed and must not continue to make demands for payment without providing clear justification and/or evidence as to why the *customer's* claim is not valid.

[**Note:** paragraph 3.7o of *DCG*]

- 7.5.4 R A *firm* acting on behalf of a *lender* or *owner* must, unless the *firm* has authority from the *lender* or *owner* to accept such an offer, refer a reasonable offer by the *customer* to pay by instalments to the *lender* or *owner*.

[**Note:** paragraph 3.9f of *DCG*]

- 7.5.5 R A *firm* acting on behalf of a *lender* or *owner* must pass on payments received from a *customer* and/or details of a *customer's* outstanding balance to the *lender* or *owner* in a timely manner or, provided the effect of the agreement does not impact adversely on the *customer*, in accordance with an agreement between the *firm* and *lender* or *owner* in question

[**Note:** paragraph 3.9g of *DCG*]

- 7.5.6 G A timely manner in *CONC 7.5.5R* would normally be within five *working days* of receipt of payment by the *firm*.

[**Note:** paragraph 3.9g of *DCG*]

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 G 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 4.6.2R*; 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 4.6.2R*; 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 4.6.2R* 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*]

- 7.6.3 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* 7.6.3R 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 is 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 7.6.9G*) 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 6.7.17R*.
- (3) Where a *firm* exercises forbearance:
- (a) paragraph (1) applies or continues to apply to the agreement;

but

- (a) 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* 6.7.17R to 6.7.23R.
- (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.

Continuous payment authorities and high-cost short-term credit: instalment payments

- 7.6.13 R (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 6.7.17R* 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*.

- 7.6.14 R (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* 6.7.17R to 6.7.23R 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;

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 G (1) *CONC* 7.6.12R, 7.6.13R and 7.6.14R 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* 7.6.14R 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* 9.1.1R (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* 7.6.1R, 7.6.12R, 7.6.13R and 7.6.14R.

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]

7.7 Application of interest and charges

- 7.7.1 G When levying charges for debt recovery on *customers* in default or arrears difficulties *firms* should consider their obligation under *Principle 6* to pay due regard to the interests of *customers* and treat them fairly.

[Note: paragraphs 3.1 and 3.10 of DCG]

- 7.7.2 R A *firm* must not claim the costs of recovering a debt from a *customer* if it has no contractual right to claim such costs.

[Note: paragraph 3.11b of DCG]

- 7.7.3 R A *firm* must not cause a *customer* to believe that the *customer* is legally liable to pay the costs of recovery where no such obligation exists.

[Note: paragraph 3.11a of DCG]

- 7.7.4 G Where a *firm* has a contractual right to levy default charges, a *regulated credit agreement* must state the charges and the conditions for making the charge under, as the case may be, the Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014) or the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553).

[Note: paragraphs 3.11c of DCG and 7.15 of ILG]

- 7.7.5 R A *firm* must not impose charges on *customers* in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the *firm*.

[Note: paragraphs 3.11 of DCG and 7.15 of ILG]

7.8 Jurisdictional requirements

- 7.8.1 R A *firm* dealing with a *customer* who is resident in a different jurisdiction to the jurisdiction of the *firm's* place of business must ensure that it takes appropriate account of any differences in law and court procedure that may have a significant impact on the *customer's* rights.
[Note: paragraph 2.3 of DCG]
- 7.8.2 G CONC 7.8.1R will apply, for example, where a *firm's* place of business is in England and the *customer* resides in Scotland.
[Note: paragraph 2.3 of DCG]
- 7.8.3 R A *firm* must not commence proceedings or threaten to commence proceedings in the wrong jurisdiction.
[Note: paragraph 3.5g of DCG]

7.9 Contact with customers

Contacting customers

- 7.9.1 R A *firm* must ensure that a *person* contacting a *customer* on its behalf explains to the *customer* the following matters:
- (1) who the *person* contacting the *customer* works for;
 - (2) the *person's* role in or relationship with the *firm*; and
 - (3) the purpose of the contact.
- [Note: paragraph 3.3c of DCG]
- 7.9.2 R A *firm* must not in a communication with the *customer* make a statement which may induce the *customer* to contact the *firm* misunderstanding the reason for making contact.
[Note: paragraph 3.3d of DCG]
- 7.9.3 G (1) An example of a misleading communication in CONC 7.9.2R is a calling card left at the *customer's* address which states or implies that the *customer* has missed a delivery and encourages the *customer* to make contact.
[Note: paragraph 3.3d (box) of DCG]
- (2) The clear fair and not misleading *rule* in CONC 3.3.1R also applies to a *firm* in relation to a communication with a *customer* in relation to *credit* agreement or a *consumer hire agreement*.
- 7.9.4 R A *firm* must not contact *customers* at unreasonable times and must pay due regard to the reasonable requests of *customers* (for example, *customers* who work in a shift pattern) in respect of when, where and how they may be

contacted.

[Note: paragraphs 3.3j and k of DCG]

- 7.9.5 R A *firm* must not require a *customer* to make contact on a premium rate or other special rate telephone number the charge for which is higher than to a standard geographic telephone number.

[Note: paragraph 3.3l of DCG]

Communication with third parties

- 7.9.6 R A *firm* must not unfairly disclose or threaten to disclose information relating to the *customer's* debt to a third party.

[Note: paragraph 3.7p of DCG]

- 7.9.7 R When contacting a *customer*:

- (1) a *firm* must ensure that it does not act in a way likely to be publicly embarrassing to the *customer*; and
- (2) a *firm* must take reasonable steps to ensure that third parties do not become aware that the *customer* is being pursued in respect of a debt
[Note: paragraph 3.7q of DCG].

- 7.9.8 G The reasonable steps required by CONC 7.9.7R may, for example, require a *firm* to ensure that:

- (1) post sent by the *firm* is properly addressed to the *customer* and marked “private and confidential” or an expression to the same effect;
- (2) where the *firm* has a name which indicates its debt collection activities, its name is not shown so that third parties may see the name on the *firm's* communications.

- 7.9.9 G CONC 7.9.7R would not preclude a *firm* sending a statutory notice to a *customer's* last known address, where it takes reasonable steps including those referred to in CONC 7.9.8G.

- 7.9.10 R A *firm* must not disclose details of a debt to an *individual* without first establishing, by suitably appropriate means, that the *individual* is (or acts on behalf of) the *borrower* or *hirer* under the relevant agreement).

[Note: paragraph 3.9b of DCG]

- 7.9.11 G A *firm* which:

- (1) threatens debt recovery action against the “occupier” of particular premises; or
- (2) sends a payment demand to all persons sharing the same name and date of birth or address as the *customer*;

is likely to contravene *CONC 7.9.10R*.

[**Note:** paragraphs 3.9a (box) and 3.9b (box) of *DCG*]

Debt collection visits

- 7.9.12 R A *firm* must ensure that a *person* visiting a *customer* on its behalf:
- (1) clearly explains to the *customer* the purpose and intended outcome of the proposed visit; and
[**Note:** paragraph 3.12 of *DCG*]
 - (2) gives the *customer* adequate notice of the date and likely time (at a reasonable time of day) of the visit.
[**Note:** paragraph 3.13g of *DCG*]
- 7.9.13 G Failure to give adequate notice prior to an initial visit to the *customer* may not contravene *CONC 7.9.12R* if the *customer* is happy to speak to the *person* pursuing recovery of the debt at that time. However, where, at the initial visit the *customer* indicates a preference to use the first visit to agree a more convenient time for a future visit, the *person* pursuing recovery of the debt should respect the *customer's* wishes. It is important that the *customer* is given reasonable time to prepare for a visit and should not be coerced or pressurised into immediate discussions or decisions.
[**Note:** paragraph 3.13g (box) of *DCG*]
- 7.9.14 R A *firm* must ensure that all *persons* visiting a *customer's* property on its behalf act at all times in accordance with the requirements of *CONC 7* and do not:
- (1) act in a threatening manner towards a *customer*;
 - (2) visit a *customer* at a time when they know or suspect that the *customer* is, or may be, particularly vulnerable;
 - (3) visit at an inappropriate location unless the *customer* has expressly consented to the visit;
 - (4) enter a *customer's* property without the *customer's* consent or an appropriate court order;
 - (5) refuse to leave a *customer's* property when it becomes apparent that the *customer* is unduly distressed or might not have the mental capacity to make an informed repayment decision or to engage in the debt recovery process;
 - (6) refuse to leave a *customer's* property when reasonably asked to do so;
 - (7) visit or threaten to visit a *customer* without the *customer's* prior agreement when a debt is deadlocked or reasonably queried or disputed

(see *CONC* 7.14 (Settlements, disputed and deadlocked debt)).

[**Note:** paragraphs 3.12 and 3.13 of *DCG*]

- 7.9.15 G It would normally be inappropriate to visit a *customer* at the *customer's* place of work or at a hospital where the *customer* is a patient.

7.10 Treatment of customers with mental capacity limitations

- 7.10.1 R A *firm* must suspend the pursuit of recovery of a debt from a *customer* when:
- (1) the *firm* has been notified that the *customer* might not have the mental capacity to make relevant financial decisions about the management of the *customer's* debt and/or to engage in the debt recovery process at the time; or
 - (2) the *firm* understands or ought reasonably to be aware that the *customer* lacks mental capacity to make relevant financial decisions about the management of the *customer's* debt and/or to engage in the debt recovery process at the time.

[**Note:** paragraphs 3.7r of *DCG* and 7.13 of *ILG*]

- 7.10.2 G A *firm* should allow a *customer* or a *person* acting on behalf of the *customer* a reasonable period of time to provide evidence as to the likely impact of any mental capacity limitation on the *customer's* ability to engage with the *firm*.

[**Note:** paragraph 3.7r (box) of *DCG*]

- 7.10.3 G *CONC* 7.10.1R does not prevent a *firm* from pursuing the debt through a responsible third party acting on behalf of the *customer*, where the *customer* has given prior consent, for example, pursuant to a registered lasting power of attorney.

[**Note:** paragraph 3.7r (box) of *DCG*]

- 7.10.4 G *Firms* should note *CONC* 7.2.1R (and its accompanying *guidance*) which requires *firms* to establish and implement policies and procedures for the fair and appropriate treatment of particularly vulnerable *customers*.

7.11 Disclosures relating to “authority” or “status”

- 7.11.1 R When contacting *customers*, a *firm* must not misrepresent its authority or its legal position with regards to the debt or debt recovery process.

[**Note:** paragraph 3.4 of *DCG*]

- 7.11.2 G For example, a *person* misrepresents authority or the legal position if they claim to work on instructions from the courts as bailiffs or, in Scotland, sheriff officers or messengers-at-arms, or in Northern Ireland, to work on

instructions from the Enforcement of Judgements Office when this is untrue.

[Note: paragraph 3.5a of DCG]

- 7.11.3 R A *firm* must not use official looking documents which are designed to, or are likely to, mislead a *customer* as to the status of the *firm*.

[Note: paragraph 3.3a of DCG]

- 7.11.4 R A *firm* must not falsely suggest or state that it is a member of a trade body or is accredited by a trade body.

[Note: paragraph 3.5c (box) of DCG]

- 7.11.5 G It is an offence under section 17 of the Legal Services Act 2007 to falsely imply that a *person* is entitled to carry on a reserved legal activity, for example, to conduct litigation or to appear before and address a court, or to take or use any relevant name, title or description, for example, “solicitor”.

[Note: paragraph 3.5c (box) of DCG]

- 7.11.6 R A *firm must* not suggest or state that action can or will be taken when legally it cannot be taken.

[Note: paragraph 3.5b of DCG]

- 7.11.7 G Examples of where a *firm* is likely to contravene CONC 7.11.6R include where a *firm* or a *person* acting on its behalf:

- (1) states or implies that bankruptcy or sequestration proceedings may be initiated when the balance of the outstanding debt is too low to qualify for such proceedings;
- (2) states or implies that steps will be taken to enforce a debt where the *customer* is making payments under a Debt Payment Programme Arrangement agreed under the Debt Arrangement and Attachment (Scotland) Act 2002;
- (3) claims a right of entry will be exercised when no court order to this effect has been granted; or
- (4) states that *goods* will be repossessed when they are “protected goods” (as defined under section 90(7) of the CCA) and no specific authorisation to repossess the *goods* has been granted by a court.

[Note: paragraph 3.5b (box) of DCG]

- 7.11.8 R A *firm must* not suggest or state that it will commence proceedings for a warrant of execution or an attachment of earnings order when a court judgment has not been obtained, or that it will take any other enforcement action before it is possible to know whether such action will be permissible.

[Note: paragraph 3.5c of DCG]

- 7.11.9 R A *firm must* not suggest or state that an action has been taken when no such

action has been taken.

[**Note:** paragraph 3.5d (box) of *DCG*]

7.12 Lenders' responsibilities in relation to debt

Application

7.12.1 R This section applies to a *firm* with respect to *consumer credit lending*.

Unfair business practices

7.12.2 R A *firm* must not:

(1) refuse to deal with a *not-for-profit debt advice body*, *debt counsellor*, *debt adjuster* or with another *person* acting on behalf of a *customer*, unless there is an objectively justifiable reason for doing so;

[**Note:** paragraphs 3.9c of *DCG* and 3.48 of *DMG*]

(2) unless the *credit agreement* requires payments to be made to a third party, refuse to accept a payment tendered to the *firm* by the *customer* or by a *person* acting on behalf of the *customer*;

[**Note:** paragraphs 3.8 of *DCG* and 3.49a of *DMG*]

(3) refuse to deal with a *customer* who is developing a repayment plan, a third party who is assisting a *customer* to develop a repayment plan or a third party who is developing a *debt management plan* for the *customer's* debts, unless there is an objectively justifiable reason for doing so;

[**Note:** paragraphs 3.9c of *DCG* and 3.49b of *DMG*]

(4) where a *person* is acting on behalf of a *customer*, directly contact the *customer* without the *customer's* consent, unless there is an objectively justifiable reason for doing so;

[**Note:** paragraph 3.9d of *DCG*]

(5) operate a policy:

(a) of only negotiating the freezing of interest and charges on a *customer's* debts where the *lender* has an existing arrangement with a *person* acting on behalf of the *customer*; or

[**Note:** paragraph 3.49e of *DMG*]

(b) of refusing to negotiate with certain third parties or with a *customer* developing their own repayment plan; or

[**Note:** paragraph 3.49c (box) of *DMG*]

- (6) return or refuse a *repayment* or refuse to credit a *repayment* to a *customer's* account merely because the *repayment* is tendered by a *debt management firm*.

[**Note:** paragraph 3.49a of *DCG*]

- 7.12.3 G (1) *CONC* 1.2.2R requires a *firm* to ensure its employees and agents comply with *CONC* and that it takes reasonable steps to ensure other *persons* who act on its behalf do so. This *rule* would apply where a *debt collector* acts as agent or on behalf of a *lender*.

- (2) Situations where it may be justified for a *firm* to refuse to deal with a *person* acting on behalf of a *customer* may include, for example, refusing to deal with that *person* where the *firm* is able to show that the *person* has failed to comply with consumer protection legislation or with *FCA rules*.

[**Note:** paragraph 3.48 of *DMG*]

- (3) It may be justified for a *firm* to contact a *customer* directly where:
- (a) repeated unsuccessful efforts have been made to contact a *person* acting on behalf of the *customer*; or

[**Note:** paragraphs 3.9d of *DCG* and 3.49c (box) of *DMG*]

- (b) the *firm* reasonably believes the *person* acting on behalf of the *customer* is acting against the best interests of the *customer*.
- (4) Situations where it would be justified for a *firm* to contact a *customer* directly include, for example:
- (a) sending a statutory notice, taking the reasonable steps required by *CONC* 7.9.7R; or
- (b) where the sole purpose of the contact is to signpost the *customer* to *not-for-profit debt advice bodies*.

- (5) Where a *firm* is in dispute with a *person* acting on behalf of the *customer* it should make its position known to that *person* and to the *customer* as soon as practicable.

[**Note:** paragraph 3.49d of *DMG*]

- (6) The *FCA* does not believe it is justified to bypass contacting a *person* acting on behalf of a *customer* merely because that *person* has not agreed to comply with the Insolvency Service's Debt Management Protocol.

7.13 Data accuracy and outsourced activities

Data accuracy

- 7.13.1 G The obtaining, recording, holding and passing on of information about individuals for the purposes of tracing a *customer* and/or recovering a debt due under a *credit agreement* or a *consumer hire agreement* or a *P2P agreement* will involve the processing of personal data. Accordingly, *firms* processing such data are data controllers or data processors and are obliged to comply with the Data Protection Act 1998 and, in particular, to adhere to the eight data protection principles.
- [**Note:** paragraph 3.16 of *DCG*]
- 7.13.2 R A *firm* must take reasonable steps to ensure that it maintains accurate and adequate data (including in respect of debt and repayment history) so as to avoid the risk that:
- (1) an *individual* who is not the true *borrower* or *hirer* is pursued for the repayment of a debt; and
 - (2) the *borrower* or *hirer* is pursued for an incorrect amount.
- [**Note:** paragraphs 3.19 of *DCG* and 7.11 (box) of *ILG*]
- 7.13.3 R A *firm* must endeavour to ensure that the information it passes on to its agent or to a *debt collector* or to a tracing agent (a person that carries on the activity in article 54 of the *Exemption Order*), whether for the *firm's* or another person's business, or to any other *person* involved in recovering the debt or, where appropriate, to a *credit reference agency* is accurate and adequate so as to facilitate the tracing and identification of the true *borrower* or *hirer*.
- [**Note:** paragraphs 3.20 of *DCG* and 7.11 (box) *ILG*]
- 7.13.4 R Before pursuing a *customer* for the repayment of a debt, a *firm* must take reasonable steps to verify the accuracy and adequacy of the available data so as to ensure that the true *customer* is pursued for the debt and that they are pursued for the correct amount.
- [**Note:** paragraphs 3.7e and 3.23a of *DCG*]
- 7.13.5 G A *firm* should ensure (subject to any legal requirements) that adequate and accurate information it holds about a *customer* in relation to a debt is made available to *persons* involved on its behalf in the debt recovery process. Information relating to the *customer* which should be made available to agents or employees includes, for example:
- (1) being in financial difficulties;
 - (2) being particularly vulnerable;
 - (3) disputing the debt;
 - (4) a repayment plan or forbearance being in place;

(5) having a representative acting on the *customer's* behalf.

[Note: paragraph 3.23b (box) of DCG]

7.13.6 G A *firm* should not impose limitations on the number or the extent of reasonable applications that can be made to it for documents or other relevant information pertaining to a *customer* in respect of which it is, or has been, the *lender* or *owner*, by a *firm* seeking such information to facilitate its pursuance of the relevant debt.

[Note: paragraph 3.23i of DCG]

7.13.7 R Where a *firm* has established that an *individual* being pursued for a debt is not the true *borrower* or *hirer* under the *credit agreement*, *regulated credit agreement*, *consumer hire agreement* or *regulated consumer hire agreement* or that the debt has been paid, the *firm* must update its records and the data supplied to the *credit reference agencies* (where applicable).

[Note: paragraph 3.23f of DCG]

Outsourcing

7.13.8 G SYSC 8.1 includes *rules* and *guidance* on outsourcing with which *firms* must or should comply as appropriate.

7.13.9 G A *firm* seeking to instruct a third party to pursue the recovery of debts or to trace *customers* on its behalf should exercise due care in selecting the third party.

[Note: paragraph 2.5 of DCG]

7.13.10 G A *firm* should take reasonable steps to seek to ensure that, where it has engaged a third party to recover debts on its behalf, the *customer* is not subject to multiple approaches by different *persons*, resulting in repetitive or frequent contact with the *customer* by different parties.

[Note: paragraph 3.7c of DCG]

7.13.11 G Where a *firm* has engaged a third party to recover debts or to trace *customers* on its behalf, it should properly investigate complaints about the third party.

[Note: paragraph 2.5 of DCG]

7.13.12 G CONC 1.2.2R requires a *firm* to ensure its employees and agents comply with CONC and that it takes reasonable steps to ensure other *persons* who act on its behalf do so.

7.13.13 R A *firm* must ensure that a third party engaged by it, where required, has the appropriate *Part 4A permission* to engage in the *regulated activities* undertaken in the course of the third party's business.

[Note: paragraph 2.6 of DCG]

7.14 Settlements, disputed and deadlocked debt

Disputed debt

- 7.14.1 R (1) A *firm* must suspend any steps it takes or its agent takes in the recovery of a debt from a *customer* where the *customer* disputes the debt on valid grounds or what may be valid grounds.
- [Note: paragraph 3.9k of *DCG*]
- (2) Paragraph (1) does not apply where a *customer* under a green deal consumer credit agreement (within the meaning of section 189B of the *CCA*) alleges that the disclosure and acknowledgement provisions in Part 7 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc) Regulations 2012 (SI 2012/2079) have been breached, but the *lender* reasonably believes this not to be the case.
- 7.14.2 G Valid grounds for disputing a debt include that:
- (1) the *individual* being pursued for the debt is not the true *borrower* or *hirer* under the agreement in question; or
- (2) the debt does not exist; or
- (3) the amount of the debt being pursued is incorrect.
- [Note: annex A3 of *DCG*]
- 7.14.3 R Where a *customer* disputes a debt on valid grounds or what may be valid grounds, the *firm* must investigate the dispute and provide details of the debt to the *customer* in a timely manner.
- [Note: paragraph 3.9i of *DCG*]
- 7.14.4 R Where there is a dispute as to the identity of the *borrower* or *hirer* or as to the amount of the debt, it is for the *firm* (and not the *customer*) to establish, as the case may be, that the *customer* is the correct *person* in relation to the debt or that the amount is the correct amount owed under the agreement.
- [Note: paragraphs 3.9j of *DCG* and 7.11 (box) of *ILG*]
- 7.14.5 R A *firm* must provide a *customer* with information on the outcome of its investigations into a debt which the *customer* disputed on valid grounds.
- [Note: paragraph 3.3g of *DCG*]
- 7.14.6 R Where a *customer* disputes a debt and the *firm* seeking to recover the debt is not the *lender* or the *owner*, the *firm* must:
- (1) pass the information provided by the *customer* to the *lender* or the *owner*; or
- [Note: paragraph 3.23h of *DCG*]

- (2) if the *firm* has authority from the *lender* or *owner* to investigate a dispute, it must notify the *lender* or *owner* of the outcome of the investigation.

Settlements and deadlocked debt etc

- 7.14.7 G A debt repayment is deadlocked where the *customer* (or the *customer's* representative) has acknowledged the *customer's* liability for a debt and has proposed a repayment plan, but the proposed repayment plan is not acceptable to the *firm* seeking to recover the debt.
[Note: annex A4 of DCG]
- 7.14.8 R A *firm* must give due consideration to a reasonable offer of repayment made by the *customer* or the *customer's* representative.
[Note: annex A5 of DCG]
- 7.14.9 R Where a *firm* rejects a proposal for repayment from a *customer* in default or in arrears difficulties or from the *customer's* representative, the *firm's* response must include a clear explanation of the reason for the rejection.
[Note: paragraph 7.16 (box) of ILG]
- 7.14.10 R If a *firm* rejects a repayment offer because it is unacceptable, the *firm* must not engage in any conduct intended to, or likely to, have the effect of intimidating the *customer* into increasing the offer.
[Note: annex A5 of DCG]
- 7.14.11 G Examples of conduct that may contravene CONC 7.14.10R would, depending on the circumstances, include where following an unacceptable offer a *firm* immediately:
- (1) sends field agents to visit the *customer* or communicates to the *customer* that it will do so;
[Note: annex A5 (box) to DCG]
- (2) substantially increases the rate of interest or imposes a substantial charge or communicates that it will do either of those things.
- 7.14.12 G In considering the *customer's* repayment offer, a *firm* should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.
[Note: annex A6 of DCG]
- 7.14.13 G (1) Merely making a counter-offer to a *customer's* repayment offer or merely taking steps to enforce an agreement would not contravene CONC 7.14.10R.
- (2) A *firm* which makes a counter offer to a proposal made by or on behalf of the *customer*, should allow the *customer* or the *customer's*

representative, a reasonable period of time to consider and respond to the counter offer.

[Note: paragraph 7.16 of *ILG*]

- 7.14.14 R If a *firm* accepts a *customer's* offer to settle a debt, it must communicate formally and unequivocally that the offer accompanied by the relevant payment has been accepted as settlement of the *customer's* liability.

[Note: paragraph 3.3h of *DCG*]

7.15 Statute barred debts

- 7.15.1 G A debt is statute barred where the prescribed period within which a claim in relation to the debt may be brought expires. In England, Wales and Northern Ireland, the limitation period is generally six years in relation to debt. In Scotland, the prescriptive period is five years in relation to debt.

[Note: annex B1 of *DCG*]

- 7.15.2 G In England, Wales and Northern Ireland, a statute barred debt still exists and is recoverable.

[Note: paragraph 3.15a and annex B3 of *DCG*]

- 7.15.3 G In Scotland, a statute barred debt ceases to exist and is no longer recoverable if:

- (1) a relevant claim on behalf of the *lender* or *owner* has not been made during the relevant limitation period; and
- (2) the debt has not been acknowledged by, or on behalf of, the *customer* during the relevant limitation period.

[Note: annex B3 of *DCG*]

- 7.15.4 R Notwithstanding that a debt may be recoverable, a *firm* must not attempt to recover a statute barred debt in England, Wales or Northern Ireland if the *lender* or *owner* has not been in contact with the *customer* during the limitation period.

[Note: paragraph 3.15b of *DCG*]

- 7.15.5 G If the *lender* or *owner* has been in regular contact with the *customer* during the limitation period, the *firm* may continue to attempt to recover the debt.

[Note: paragraph 3.15b of *DCG*]

- 7.15.6 R A *firm* must endeavour to ensure that it does not mislead a *customer* as to the *customer's* rights and obligations.

[Note: paragraph 3.15b of *DCG*]

- 7.15.7 G It is misleading for a *firm* to suggest or state that a *customer* may be the subject of court action for the sum of the statute barred debt when the *firm* knows, or reasonably ought to know, that the relevant limitation period has expired.

[Note: paragraph 3.15b of DCG]

- 7.15.8 R A *firm* must not continue to demand payment from a *customer* after the *customer* has stated that he will not be paying the debt because it is statute barred.

[Note: paragraph 3.15b of DCG]

- 7.15.9 R A *firm* must identify for prospective purchasers of debts arising under *credit agreements* or *consumer hire agreements* or *P2P agreements* those debts which it knows or ought reasonably to know are statute barred, so as to avoid a *firm* taking inappropriate action against *customers* in relation to such debts.

[Note: paragraph 3.23c of DCG]

Complaints to the Financial Ombudsman Service and initiating legal proceedings

- 7.15.10 R A *lender* must not initiate legal proceedings in relation to a *regulated credit agreement* where the *lender* is aware that the *customer* has submitted a valid complaint or what appears to the *firm* may be a valid complaint relating to the agreement in question that is being considered by the *Financial Ombudsman Service*.

[Note: paragraph 7.9 (box) of ILG]

7.16 Passing data to lead generators etc.

- 7.16.1 R A *firm* must not pass on a *customer's* details to third parties, including *lead generators*, *debt management firms*, *lenders*, *owners*, *debt collectors* or *credit brokers*, unless it is appropriate to do so.

[Note: paragraph 3.9e of DCG]

- 7.16.2 G A *firm* which is lawfully entitled to pass on a *customer's* details to a third party pursuant to the Data Protection Act 1998 should nonetheless, as a matter of good practice, obtain the *customer's* consent before passing on the information to the third party.

[Note: paragraph 3.9e of DCG]

7.17 Notice of sums in arrears under P2P agreements for fixed-sum credit

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 7.17.4R* 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
- (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 *borrower*.
- 7.17.4 R (1) The *firm* must, within the period of 14 days beginning with the day on which the conditions in *CONC 7.17.3R* are satisfied, give the *borrower* a notice including the information set out in *CONC 7.17.7R* and *7.17.8R*.
- (2) After giving that notice, the *firm* must give the *borrower* further notices including the information in *CONC 7.17.7R* and *7.17.8R* at intervals of not more than six *months*.
- 7.17.5 R (1) The duty of the *firm* to give the *borrower* notices under *CONC 7.17.4R* 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.

- (2) The conditions referred to in (1) are:
 - (a) that the *borrower* ceases to be in arrears;
 - (b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the *borrower*.
- (3) For the purposes of (2)(a) the *borrower* ceases to be in arrears when:
 - (a) no payments, which the *borrower* has ever failed to make under the agreement when required, are still owing;
 - (b) no default sum, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing;
 - (c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and
 - (d) no other sum of interest, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing.
- (4) A *firm* must accompany the notice required by *CONC 7.17.4R* with a copy of the current arrears information sheet under section 86A of the *CCA* with the following modifications:
 - (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.”.

- (5) The *firm* must not charge the *borrower* a fee in connection with preparation of or the giving of the notice required by *CONC 7.18.4R*.

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 7.17.4R* 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 R 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;
- (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

- 7.17.9 R 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 (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*.

7.18 Notice of sums in arrears under P2P agreements for running-account credit

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 7.18.3R* 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 7.18.5R*.
- (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 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 7.18.3R* 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* 7.18.3R is not more than £2, the notice:
- (a) need not include any of the information or statements referred to in *CONC* 7.18.4R;
 - (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).

7.19 Notice of default sums under P2P agreements

Application

- 7.19.1 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*.
- 7.19.2 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* (but whether or not with the same *lender*) are entered into at or about the same time.
- (3) Where (2) applies, the *firm's* obligation in *CONC* 7.19.4R applies as if all of the *P2P agreements* made with a *borrower* at or about the same time were a single agreement.
- 7.19.3 R (1) In this section "default sum" means in relation to the *borrower* under a *P2P agreement*, a sum (other than a sum of interest) which is payable by the *borrower* under the agreement in connection with a breach of the agreement by the *borrower*.
- (2) But a sum is not a default sum in relation to the *borrower* simply because as a consequence of the breach of the agreement the *borrower* is required to pay the sum earlier than would otherwise have been the case.

Notice of default sums

- 7.19.4 R Where a default sum becomes payable under a *P2P agreement* by the *borrower*, the *firm* must give notice to the *borrower* within 35 days of a default sum becoming payable by the *borrower*.
- 7.19.5 R The notice required by *CONC 7.19.4R* must contain:
- (1) a form of wording to the effect that it relates to default sums and is given in compliance with *FCA rules*;
 - (2) the date of the notice;
 - (3) a description of the agreement sufficient to identify it;
 - (4) the *firm's* name, telephone number, postal address and, where appropriate, any other address;
 - (5) the amount and nature of each default sum payable under the agreement which has not been the subject of a previous notice of default sums;
 - (6) the date upon which each default sum referred to in the notice became payable under the agreement;
 - (7) the following statement:
"This notice does not take account of default sums which we have already told you about in another default sum notice, whether or not those sums remain unpaid."; and
 - (8) the total amount of all the default sums included in the notice.

8 Debt advice**8.1 Application**

- 8.1.1 R This chapter applies, unless otherwise stated in or in relation to a *rule* to every *firm* with respect to:
- (1) *debt counselling*;
 - (2) *debt adjusting*; and
 - (3) to the extent of giving the advice referred to in article 89A(2) of the *Regulated Activities Order*, *providing credit information services*.
- 8.1.2 G *CONC 8.10* (Conduct of business: providing credit information services) sets out that that section applies to every *firm* with respect to *providing credit information services* and with respect to *operating an electronic system in*

relation to lending.

- 8.1.3 G *CONC 8* covers all *firms* with respect to *debt counselling*, *debt adjusting* and *providing credit information services*, which includes profit-seeking as well as *not-for-profit bodies* which hold such *permissions* and in that case include those bodies with *permission* by virtue of article 62 of the *Regulated Activities Order*.

[**Note:** paragraph 1.10 of *DMG*]

- 8.1.4 G The activities of *debt counselling* and *debt adjusting* apply to *credit agreements* and *consumer hire agreements* whether they are regulated or not.

8.2 Conduct standards: debt advice

Overarching principles

- 8.2.1 G The Principles for Businesses (*PRIN*) apply as a whole to *firms* with respect to *debt counselling*, *debt adjusting* and *providing credit information services*.

- 8.2.2 G (1) One aspect of conducting a *firm's* business with due skill, care and diligence under *Principle 2* is that a *firm* should ensure that it gives appropriate advice to *customers* residing in the different countries of the *UK*. Failure to pay proper regard to the differences in options for *debt solutions* available to those *customers* and to the differences in enforcement actions and procedures is likely to contravene *Principle 2* and may contravene other *Principles*.

[**Note:** paragraph 3.23d of *DMG*]

- (2) Recommending a *debt solution* which a *firm* knows, believes or ought to suspect is unaffordable for the *customer* is likely to contravene *Principle 2*, *Principle 6* and *Principle 9* and may contravene other *Principles*.

[**Note:** paragraph 3.26j of *DMG*]

- (3) An example of behaviour that is likely to contravene *Principle 6* and may contravene other *Principles* in this field is for a *firm* to actively discourage a *customer* from considering alternative sources of *debt counselling*.

[**Note:** paragraph 3.23m of *DMG*]

- 8.2.3 G A *firm* covered by *CONC 8* has obligations under the *FCA's* Dispute Resolution: Complaints sourcebook (*DISP*) to treat complainants fairly; these are set out in *DISP 1*.

Signposting to sources of free debt counselling, etc

- 8.2.4 R A *debt management firm* must prominently include:
- (1) in its first written or oral communication with the *customer* a statement that free *debt counselling, debt adjusting and providing of credit information services* is available to *customers* and that the *customer* can find out more by contacting the Money Advice Service; and
 - (2) on its web-site the following link to the Money Advice Service web-site (<https://www.moneyadviceservice.org.uk/en/articles/where-to-go-to-get-free-debt-advice>).
- [Note: paragraph 1.7 of Debt Management Protocol]

Dealing with lenders of customers

- 8.2.5 R A *firm's* communications to *lenders* (or to *lenders' representatives*) on behalf of its *customers* must be transparent so as to ensure a *firm's customer's* interests are not adversely affected.
- [Note: paragraph 2.5 of DMG]
- 8.2.6 R Where entry into a *debt solution* will lead to a period when payments to *lenders* (in part or in whole) are not made or are retained by the *firm*, the *firm* must, as soon as possible after the *customer* enters into the *debt solution*, notify the *customer's lenders* of the reason payments are not to be made to the *lender* and the period during which that will be the case.
- [Note: paragraph 3.18niv of DMG]

Vulnerable customers

- 8.2.7 R A *firm* must establish and implement clear and effective policies and procedures to identify particularly vulnerable *customers* and to deal with such *customers* appropriately.
- [Note: paragraph 2.4 of DMG]
- 8.2.8 G Most *customers* seeking advice on their debts under *credit agreements* or *consumer hire agreements* may be regarded as vulnerable to some degree by virtue of their financial circumstances. Of these *customers* some may be particularly vulnerable because they are less able to deal with *lenders* or *debt collectors* pursuing them for debts owed. *Customers* with mental health and mental capacity issues may fall into this category.
- [Note: paragraph 2.4 of DMG]

8.3 Pre contract information and advice requirements

- 8.3.1 R A *firm* must (except where the contract is a *credit agreement* to which the *disclosure regulations* apply) provide sufficient information, on a *durable medium*, when the *customer* first enquires about the *firm's* services, about the

following matters to enable the *customer* to make a reasonable decision:

- (1) the nature of the *firm's* service offered in the contract to the *customer*;
[Note: paragraph 3.38b of *DMG*]
- (2) the duration of the contract;
[Note: paragraph 3.38c of *DMG*]
- (3) the total cost of the *firm's* service or, where it is not possible to state the total cost, the formula the *firm* uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;
[Note: paragraph 3.40c of *DMG*]
- (4) any fee or deposit, such as an arrangement fee, a periodic fee, a management fee, or an administrative fee;
[Note: paragraph 3.38c of *DMG*]
- (5) any fee or charge which can be imposed on the *customer* in relation to cancellation of the contract;
[Note: paragraph 3.38c of *DMG*]
- (6) any other costs likely to be incurred under the contract and the circumstances in which these would be payable;
[Note: paragraph 3.38c of *DMG*]
- (7) where the *firm* bases its fees or charges on some percentage or an hourly rate or some other formula, an explanation of how the fees or charges are calculated;
[Note: paragraph 3.9c of *DMG*]
- (8) the elements of the service that the fees cover;
[Note: paragraph 3.38c of *DMG*]
- (9) the circumstances in which a *customer* may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the *customer* may be required to pay in that case;
[Note: paragraph 3.40d of *DMG*]
- (10) the consequences on the *customer's* credit rating, including how long the matter will show on the *customer's* credit file and that the *customer* may not be able to obtain *credit* or other financial services in the future;
[Note: paragraph 3.38e of *DMG*]
- (11) whether a right to cancel applies and, if so, the period and any conditions for exercising the right to cancel the contract and any amount the *customer* may be required to pay;

[Note: paragraph 3.38h of *DMG*]

- (12) how payments will be allocated to *lenders* and when payments will be made; and

[Note: paragraph 3.38k of *DMG*]

- (13) the period of time between payments being received from the *customer* and payments being made to *lenders*, including the date when the first payment will be made to *lenders*.

[Note: paragraph 3.38l of *DMG*]

[Note: paragraphs 3.33, 3.35 and 3.38 of *DMG*]

8.3.2 R A *firm* must ensure that:

- (1) all advice given and action taken by the *firm* or its agent or its *appointed representative*:
- (a) has regard to the best interests of the *customer*;
 - (b) is appropriate to the individual circumstances of the *customer*; and
 - (c) is based on a sufficiently full assessment of the financial circumstances of the *customer*;

[Note: paragraph 2.6a of *DMG*]

- (2) *customers* receive sufficient information about the available options identified as suitable for the *customers'* needs; and

[Note: paragraph 2.6b of *DMG*]

- (3) it explains the reasons why the *firm* considers the available options suitable and other options unsuitable.

[Note: paragraph 2.6b of *DMG*].

8.3.3 G The individual circumstances of the *customer* include, for example, the *customer's* financial position, the country in the *UK* to whose laws and procedures the *customer* and the *lender* in question are subject, and the level of understanding of the *customer*.

[Note: paragraph 2.6c of *DMG*]

8.3.4 R A *firm* must ensure that advice provided to a *customer*, whether before the *firm* has entered into contract with the *customer* or after, is provided in a *durable medium* and:

- (1) makes clear which debts will be included in any *debt solution* and which debts will be excluded from any *debt solution*;

[Note: paragraph 3.38j of *DMG*]

- (2) makes clear the actual or potential advantages, disadvantages, costs and risks of each option available to the *customer*, with any conditions that apply for entry into each option and which debts may be covered by each option;

[Note: paragraphs 3.23a and 3.38b of *DMG*]

- (3) warns the *customer*:

- (a) of the actual or potential consequences of failing to continue to pay taxes, fines, child support payments and debts which could result in loss of access to essential *goods* or services or repossession of, or eviction from, the *customer's* home;

[Note: paragraph 3.38m of *DMG*]

- (b) of the actual or potential consequences of not continuing to make *repayments* under *credit agreements* or *consumer hire agreements*;

[Note: paragraph 3.26k of *DMG*]

- (c) of the actual or potential consequences of ignoring correspondence or other contact from *lenders* and those acting on behalf of *lenders*;

[Note: paragraph 3.38n of *DMG*]

- (d) that action to recover debts may be commenced, which may involve further cost to the *customer*; and

[Note: paragraph 3.38q of *DMG*]

- (e) that by entering into a *debt management plan* or another non-statutory repayment plan there is no guarantee that any current recovery or legal action will be suspended or withdrawn;

[Note: paragraph 3.38r of *DMG*]

- (4) where relevant to the *debt solution*, makes clear the risks, including the following risks:

- (a) if the arrangement or deed fails, the risk of bankruptcy;
- (b) homeowners may need to release equity from the value of their homes to pay off debts; and that a remortgage may attract higher interest rates or that if no remortgage is available, an individual voluntary arrangement may be extended for 12 *months*;
- (c) there are restrictions on the expenditure of a *person* who enters into an individual voluntary arrangement or protected trust deed;
- (d) the *customer's lenders* may not approve the individual voluntary arrangement or protected trust deed; and

- (e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding;

[Note: paragraph 3.38s of *DMG*]

- (5) takes proper account of the individual needs of, and any requests made by, a *customer*; and

[Note: paragraph 3.23f of *DMG*]

- (6) where relevant, explains the nature of an insolvency procedure and the role of the *firm*.

[Note: paragraph 3.23o of *DMG*]

[Note: paragraphs 3.23 and 3.38 of *DMG*]

- 8.3.5 G The information required by *CONC* 8.3.4R should be provided leaving sufficient time for the *customer* (taking into account the complexity of the information and the *customer's* financial position) to consider it before having to make a decision on the appropriate course of action.

- 8.3.6 G A *firm* should not unfairly incentivise debt advisers (whether employees, agents or *appointed representatives* of the *firm*) to the extent that an incentive might lead the *firm* not to comply with *CONC* 8.3.2R.

[Note: paragraph 3.22 (box) of *DMG*]

- 8.3.7 R A *firm* must:

- (1) provide the *customer* with a source of impartial information on the range of *debt solutions* available to the *customer* in the relevant country of the *UK*;

[Note: paragraph 3.23b of *DMG*]

- (2) before giving any advice or any recommendation on a particular course of action in relation to the *customer's debts*, carry out a reasonable and reliable assessment of:

- (a) the *customer's* financial position (including the *customer's* income, capital and expenditure);
- (b) the *customer's* personal circumstances (including the reasons for the financial difficulty, whether it is temporary or longer term and whether the *customer* has entered into a *debt solution* previously and, if it failed, the reason for its failure); and
- (c) any other relevant factors (including any known or reasonably foreseeable changes in the *customer's* circumstances such as a change in employment status);

[Note: paragraph 3.23c of *DMG*]

- (3) refer a *customer* to an appropriate *not-for-profit debt advice body* in circumstances where the *customer*:
 - (a) has problems related to debt requiring immediate attention with which the *firm* is unable or unwilling to assist the *customer*; or
[Note: paragraph 3.23gi of *DMG*]
 - (b) does not have enough disposable income to pay the *firm's* fees;
[Note: paragraph 3.23gii of *DMG*]
- (4) refer a *customer* to, or provide contact details for, another debt advice provider in circumstances where the *firm* is unable to provide appropriate advice or provide an appropriate *debt solution* for the *customer*; and
[Note: paragraph 3.23h of *DMG*]
- (5) seek to ensure that a *customer* understands the options available and the implications and consequences for the *customer* of the *firm's* recommended course of action.
[Note: paragraph 3.23i of *DMG*]

- 8.3.8 G (1) The information and advice referred to in *CONC* 8.3 should be provided in a manner which is clear fair and not misleading to comply with *Principle 7* and *CONC* 3.3.1R, and should be in plain and intelligible language in accordance with *CONC* 3.3.2R. A *firm* should encourage a *customer* to read the information and allow sufficient time between providing the information and entering into the contract to enable the *customer* to seek independent advice if so desired.
[Note: paragraphs 3.21, 3.35 and 3.36 of *DMG*]
- (2) The *firm's* services referred to in *CONC* 8.3 include any *debt solution* the *firm* offers to a *customer*. Therefore, in setting out fees or charges for a *firm's* services, the fees and charges the *firm* charges in relation to a *debt solution* should be included.
 - (3) The serious problems related to debt in *CONC* 8.3.7R are likely to include, where non-payment of a debt may result in the loss of a *customer's* home or loss of access to essential *goods* or services and, in particular, where legal action is threatened or legal action is taken in relation to debts which may have that effect.
[Note: paragraph 3.23gi of *DMG*]
 - (4) A *not-for-profit debt advice body* should refer a *customer* to another *not-for-profit debt advice body* under *CONC* 8.3.7R(3) where, for example, it is unable to assist a *customer*.

- (5) An appropriate *not-for-profit debt advice body* would be one that provides the most appropriate *debt solution* given the *customer's* financial circumstances.

8.4 Debt solution contracts

- 8.4.1 R A *firm* must provide a *customer* with a written contract setting out its terms and conditions for the provision of its services.
[Note: paragraph 3.40a of *DMG*]
- 8.4.2 R A *firm* must include in its written contract (other than a *credit agreement* to which the Consumer Credit (Agreements) Regulations 2010 apply) the following matters:
- (1) the nature of the service to be provided by the *firm*, including the specific *debt solution* to be offered to the *customer*;
[Note: paragraph 3.40b of *DMG*]
 - (2) the duration of the contract;
[Note: paragraph 3.40c of *DMG*]
 - (3) the total cost of the *firm's* service or, where it is not possible to state the total cost, the formula the *firm* uses for calculating its fees or charges or an estimate of the anticipated likely total cost may be given;
[Note: paragraph 3.40c of *DMG*]
 - (4) the circumstances in which a *customer* may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the *customer* may be required to pay in that case; and
[Note: paragraph 3.40d of *DMG*]
 - (5) set out the duration and conditions for exercise of any right to cancel that may apply and any fees or charges the *customer* may be required to pay.
[Note: paragraph 3.40e of *DMG*]
- 8.4.3 R A *firm* must not include the following terms in a contract with a *customer*:
- (1) a term requiring the *customer* to sign a declaration stating in any way that the *customer* understands the requirements of the contract;
[Note: paragraph 3.41a of *DMG*]
 - (2) a term restricting or prohibiting the *customer* from corresponding with or responding to a *lender* or with any *person* acting on behalf of a *lender*;

[Note: paragraph 3.41b of *DMG*]

- (3) a term which states or implies the *firm* has no liability to the *customer*; or

[Note: paragraph 3.41c of *DMG*]

- (4) a term which states or implies that there are no circumstances in which a *customer* is entitled to a refund.

[Note: paragraph 3.41d of *DMG*]

- 8.4.4 G A *firm* may be required to make a refund of its fees and charges, in whole or in part, if a *firm* fails to deliver its service in whole or in part or it has carried out the service without reasonable care and skill.

8.5 Financial statements and debt repayment offers

- 8.5.1 R A *firm* must ensure that a financial statement sent to a *lender* on behalf of a *customer*:

- (1) is accurate and realistic and must present a sufficiently clear and complete account of the *customer's* income and expenditure, debts and the availability of surplus income;

[Note: paragraph 3.24 of *DMG*]

- (2) state any fees or charges being made by the *firm*;

- (3) is sent only after having obtained the *customer's* consent to send the statement and the *customer's* confirmation as to the accuracy of the statement;

[Note: paragraph 3.26f and g of *DMG*]

- (4) is provided to the *customer's lenders* as soon as practicable after the *customer* has confirmed its accuracy; and

[Note: paragraph 3.26e of *DMG*]

- (5) is also sent to the *customer*, together with any accompanying correspondence.

[Note: paragraph 3.26h of *DMG*]

- 8.5.2 G The format of the financial statement sent to *lenders* on behalf of the *customer* should be uniform and logically structured in a way that encourages consistent responses from *lenders* and reduces queries and delays. *Firms* may wish to use the Common Financial Statement facilitated by the Money Advice Trust or an equivalent or similar statement.

[Note: paragraph 3.24 of *DMG*]

- 8.5.3 G (1) Where a *firm* makes an offer to a *lender* to repay a *customer's* debts on behalf of a *customer*, the offer should be realistic, sustainable and in accordance with *CONC* 8.3.2R should, in particular, have regard to the best interests of the *customer*.
- (2) A sustainable offer should enable the *customer* to meet *repayments* in full when they are due out of the *customer's* disposable income for the whole duration of the repayment proposal.
- (3) Setting the offer should take full account of a *customer's* obligations to pay taxes, fines, child support payments and those debts which could result in loss of access to essential *goods* or services or repossession of, or eviction from, the *customer's* home.
- (4) In considering what are essential *goods* and services, the *firm* should consider the *customer's* personal circumstances, for example, for disabled persons debts for telecommunications services are likely to be essential.

[**Note:** paragraphs 3.25, 3.26c and 3.28d of *DMG*]

8.5.4 R A *firm* must:

- (1) take reasonable steps to verify the *customer's* identity, income and outgoings;
- [**Note:** paragraph 3.26a of *DMG*]
- (2) seek explanations if a *customer* indicates expenditure which is particularly high or low; and
- [**Note:** paragraph 3.26b of *DMG*]
- (3) where applicable, notify a *customer* that a particular *lender* will not deal with the *firm* (for whatever reason), as soon as possible after the *firm* becomes aware that the *customer* owes a debt to that *lender*.

[**Note:** paragraph 3.26l of *DMG*]

8.5.5 G What are reasonable steps for verification of the identity, income and outgoings of a *customer* depends on the circumstances of the case and the type of service offered by the *firm*. Estimates of expenditure would be reasonable where precise figures are not readily available. The Common Financial Statement includes expenditure guidelines, but where a *firm* uses the Common Financial Statement or an equivalent or similar statement which includes such guidelines, the use of expenditure guidelines needs to take into account the individual circumstances of the *customer*.

[**Note:** paragraph 3.26a (box) of *DMG*]

8.6 Changes to contractual payments

- 8.6.1 R (1) Where a *firm* gives advice to a *customer* not to make a contractual *repayment* or to cancel any means of making such a *repayment* before any *debt solution* is agreed or entered into, the *firm* must be able to demonstrate the advice is in the *customer's* best interests.
- (2) Where a *firm* gives advice of the type in (1), the *firm* must advise the *customer* (C) that if C adopts the advice C should notify C's *lenders* without delay and explain that C is following the *firm's* advice to this effect.
- [Note: paragraph 3.27 of *DMG*]
- 8.6.2 R If the effect of advice the *firm* gives (if adopted by the *customer*) is that contractual *repayments* are not made or are not made in full (for one or more *repayments*), the *firm* must warn the *customer* of the actual or potential consequences of taking that course of action.
- [Note: paragraph 3.28a of *DMG*]
- 8.6.3 R A *firm* must only advise a *customer* to make *repayments* at a rate lower than the rate necessary to meet interest and charges accruing where it is in the *customer's* best interests.
- [Note: paragraph 3.28b of *DMG*]
- 8.6.4 G (1) The *FCA* expects it will generally be in the *customer's* best interests to maintain regular payments to *lenders* (even if the repayment is less than the full sum due).
- (2) An example where it might be in the *customer's* best interests not to repay at the rate necessary to meet interest and charges accruing is where there is insufficient disposable income to meet essential expenditure of the type referred to in *CONC* 8.5.3G. Where that is the case, the *firm* should explain clearly to the *customer* why this course of action is necessary and the consequences of the course of action.
- 8.6.5 R Where a *firm* has advised a *customer* not to make contractual *repayments* (in full or in part) or to cancel the means of making such payments or not to make *repayments* necessary to meet interest and charges accruing, the *firm* must advise the *customer* if it becomes clear that that course of action is not producing effects in the *customer's* best interests to enable the *customer* to take action in the *customer's* best interests.
- [Note: paragraph 3.28c of *DMG*]
- 8.6.6 G (1) An example of an effect not in the *customer's* best interests would be if a *lender* does not agree to stop applying interest and charges to the *customer's* debt.
- [Note: paragraph 3.28c of *DMG*]
- (2) Where it becomes clear that the course of action in *CONC* 8.6.5R is not producing effects in the *customer's* best interests the *firm* should, where withdrawing from the *debt management plan* may be in the

customer's best interests, advise the *customer* of the possibility of withdrawing from the plan.

8.7 Charging for debt counselling, debt advice and related services

- 8.7.1 G (1) The distance marketing rules in CONC 2.6, including the right to cancel in CONC 11, apply to *firms* with respect to *distance contracts* which are *credit agreements*, *consumer hire agreements* and agreements the subject matter of which comprises, or relates to, *debt counselling*, *debt adjusting*, *providing credit information services* and *providing credit references*. CONC 11 excludes various *credit agreements* from the right to cancel.
- (2) Where a *consumer* uses the right to cancel under CONC 11 or under the Financial Services (Distance Marketing) Regulations 2004 to cancel an agreement with a *firm* to set up or administer a *debt solution*, the *firm* should refund any sum paid, less a charge that the *firm* is entitled to make under CONC 11.1.11R or regulation 13(6) to (9) of those Regulations.
- [Note: paragraphs 3.29 and 3.31 of DMG]
- (3) The *firm* may be entitled to impose a charge in (2) if the *customer* requested the *firm* to begin to carry out its service within the cancellation period (see CONC 11.1.1R or regulation 10 of the Financial Services (Distance Marketing) Regulations 2004,
- 8.7.2 R A *firm* must ensure that the obligations of the *customer* in relation to the amount, or the timing of payment, of its fees or charges:
- (1) do not have the effect that the *customer* pays all, or substantially all, of those fees in priority to making *repayments* to *lenders* in accordance with the *debt management plan*; and
- (2) do not undermine the *customer's* ability to make (through the *firm* acting on the *customer's* behalf) significant *repayments* to the *customer's lenders* throughout the duration of the *debt management plan*, starting with the first *month* of the plan; but
- (3) paragraphs (1) and (2) do not prevent, to the extent the *firm* complies with all applicable rules, a *firm* operating a full and final settlement model, in which the *firm* holds money on behalf of the *customer* and does not distribute that money promptly, pending negotiating a settlement with the *customer's lenders*.
- [Note: paragraphs 5.3 and 5.4 of the Debt Management Protocol]
- 8.7.3 G (1) For the purposes of CONC 8.7.2R(2), an obligation is likely to be viewed as undermining the *customer's* ability to make significant repayments to the *customer's lenders* if it has the effect that the *firm* may allocate more than half of the sums received from the *customer* in

any one-month period from the start of the *debt management plan* to the discharge (in whole or in part) of its fees or charges.

- (2) Once the *customer* has paid any initial fee for the arrangement and preparation of the *debt management plan*, or, if earlier, once six months from the start of the plan have elapsed, the *FCA* would expect there usually to be a reduction in the proportion of the sums received from the *customer* that the *firm* allocates to the discharge of its fees and charges.
- (3) A *firm* should spread any charges or fees payable by the *customer* for the administration or operation of the *debt management plan* following its making evenly over the duration of the plan.
- (4) The proportion of the sums received from a *customer* in order to discharge the *firm's* fees or charges should take account of the level of *repayments* the *customer* in question makes.

8.7.4 R A *firm* must:

- (1) in good time before entering into a contract with the *customer*, disclose the existence of any commission or incentive payments relevant to the service provided to the *customer* between the *firm* and any third party and at any time, if the *customer* requests, disclose the amount of any such commission or incentive payment;

[Note: paragraph 3.34b and c of *DMG*]

- (2) send a revised financial statement in the same format as that required under *CONC* 8.5.1R to the *customer's lenders* where the *firm's* fees or charges alter during an arrangement and would affect the amount available for distribution to *lenders*;

[Note: paragraph 3.34f (box) of *DMG*]

- (3) at the earlier of, where the *firm* identifies or it is established that advice provided by the *firm* to the *customer* was incorrect or was not appropriate to the *customer*, refund or credit to the *customer's* account fees or charges imposed for that advice;

[Note: paragraph 3.34m of *DMG*]

- (4) make an appropriate refund of fees or charges paid where the whole or any part of the service as agreed with the *customer* has not been provided or not provided with a reasonable standard of skill and care.

[Note: paragraph 3.34o of *DMG*]

8.7.5 G A *firm*, in presenting its fees, costs and charges, should distinguish the fees payable for the *firm's* services from any charges payable for court proceedings or other insolvency proceedings.

8.7.6 R A *firm* must not:

- (1) without a reasonable justification, switch a *customer* from one *debt solution* to another while making a further charge for setting up or administering the new *debt solution* to the extent that some or all of that work has already been carried out by the *firm*;
[Note: paragraphs 3.32 and 34k of *DMG*]
- (2) switch a *customer* to a different *debt solution*, without obtaining the *customer's* consent after having fully explained to the *customer* the reason for the change;
[Note: paragraph 3.34l of *DMG*]
- (3) require or take any payment from a *customer* before the *firm* has entered into contract with the *customer* concerning a *debt solution*;
[Note: paragraph 3.34d of *DMG*]
- (4) request any payment from a *customer's payment account*, unless the *customer* has specifically authorised the *firm* to do so and has not cancelled that authorisation;
[Note: paragraph 3.34d (box) of *DMG*]
- (5) accept payment for fees or charges by credit card or another form of *credit* (excluding a payment where the *firm* does not know and cannot be expected to know that the *customer's* current account is in debit or would be taken into debit by the payment);
[Note: paragraph 3.34e of *DMG*]
- (6) impose cancellation charges that are unreasonable or disproportionate when compared to the actual costs necessarily incurred by the *firm* in reasonably providing its service;
[Note: paragraph 3.34h of *DMG*]
- (7) claim a fee or charge from a *customer* or take payment from a *customer's* account which is not provided for in the agreement with the *customer*, or where it is provided for but is, or is likely to be, unfair under the Unfair Terms in Consumer Contracts Regulations 1999;
[Note: paragraph 3.34i of *DMG*]
- (8) where the *firm* identifies that advice provided by the *firm* to the *customer* was incorrect or was not appropriate to the *customer*, charge an additional fee for further or revised advice; or
[Note: paragraph 3.34m of *DMG*]
- (9) request, suggest or instruct *customers* seeking to recover refunds of fees from the *firm* to make contact with the *firm* on a premium rate telephone number.
[Note: paragraph 3.34n of *DMG*]

8.8 Debt management plans

- 8.8.1 R A *firm* in relation to a *customer* with whom it has entered into a *debt management plan* must:
- (1) maintain contact with the *customer*;
[Note: paragraph 3.44 of *DMG*]
 - (2) regularly monitor and review the financial position and circumstances of the *customer*;
[Note: paragraph 3.44 of *DMG*]
 - (3) adapt the *debt management plan* to take into account relevant changes in the financial position and circumstances of the *customer*;
[Note: paragraph 3.44 of *DMG*]
 - (4) inform the *customer* without delay of the outcome of negotiations with *lenders*, in particular, where the *lender* has:
 - (a) refused to deal with the *firm*; or
 - (b) returned payments to the *firm*; or
 - (c) refused the debt repayment offer; or
 - (d) refused to freeze interest or charges accruing;
[Note: paragraph 3.45a of *DMG*]
 - (5) inform the *customer* of any material developments about the relationship between the *customer* and the *customer's lenders*;
[Note: paragraph 3.45b of *DMG*]
 - (6) provide the *customer* with copies of correspondence or documentation relating to material developments relevant to the relationship between the *customer* and the *customer's lenders*;
[Note: paragraph 3.45b of *DMG*]
 - (7) where the *firm* makes *repayments* on behalf of the *customer*:
 - (a) monitor the *customer's repayments* for evidence which suggests a change in the *customer's* financial circumstances;
 - (b) review, and amend or terminate, where appropriate, the *customer's debt management plan* at the earlier of:
 - (i) each anniversary of entering into the plan; or

- (ii) as soon as the *firm* becomes aware of a material change in the *customer's* circumstances; and
 - (c) inform the *customer* of the outcome of any reassessment;
[Note: paragraph 3.45c of *DMG*]
 - (8) provide a statement to the *customer* at the start of the *debt management plan*, and at least annually or at the *customer's* reasonable request, setting out:
 - (a) a balance showing the amount owed by the *customer*, including any interest charges at the beginning of the statement period;
 - (b) fees, charges and other costs applied over the period of the statement, including any upfront fee or deposit, such as an initial arrangement fee, an arrangement fee, any periodic or management or administrative fee, any cancellation fee and any other costs incurred under the contract;
 - (c) a narrative explaining the type of fee applied, how the fee is calculated and to what it applies;
 - (d) the duration or estimated duration of the contract;
 - (e) the total cost of the *firm's* service over the duration or estimated duration of the contract; and
 - (f) *monthly* or other periodic payments made to *lenders*;
[Note: paragraphs 3.45cde of *DMG*]
 - (9) maintain adequate records relating to each *debt management plan* which the *firm* has administered for the *customer* until the contract between the *customer* and the *firm* is completed or terminated;
[Note: paragraph 3.45i of *DMG*]
 - (10) check the accuracy of the details of the *customer's* accounts; and
[Note: paragraph 3.45j of *DMG*]
 - (11) use reasonable endeavours not to send inaccurate information to *lenders*.
[Note: paragraph 3.45j of *DMG*]
- 8.8.2 G (1) Evidence that there may have been a material change in a *customer's* financial circumstances is likely to include where a *customer* who has not previously missed payments under a *debt management plan* misses such payments.
[Note: paragraph 3.45ci of *DMG*]

- (2) Where the *firm* informs a *customer* of the outcome of a review of a *debt management plan*, it should seek to discuss with the *customer* any changes to the plan or to the *firm's* service at the earliest reasonably opportunity.

[Note: paragraph 3.45ciii of *DMG*]

- (3) In *CONC* 8.8.1R(6) correspondence or documentation relating to material developments would include, for example, the issue or threat of issue of default notices or legal proceedings.

[Note: paragraph 3.45b of *DMG*.]

8.9 Lead generators: including firm responsibility in dealing with lead generators

- 8.9.1 G The *Principles* (in particular *Principle 6* and *Principle 7*) apply to actions of a *firm* dealing with a *customer* who has been referred to it through a *lead generator*. For example, where a *firm* acts on a sales lead and knows or ought to know that the *lead generator* is using misleading information, advice or actions to obtain a *customer's* personal data is likely to amount to a breach by the *firm* of *Principle 6* and *Principle 7*.

- 8.9.2 R A *firm* must take reasonable steps before entering into an agreement to accept sales leads from a *lead generator* for *debt counselling* or *debt adjusting* or *providing credit information services* to ensure:

- (1) that any of the *lead generator's* advice, any content of its website and advertising and any of its commercial practices comply with applicable legal requirements, including the Consumer Protection from Unfair Trading Regulations 2008;
- (2) that the *lead generator* is registered with the Information Commission's Office under the Data Protection Act 1998; and
- (3) that the *lead generator* has processes in place to ensure it complies with that Act and with the Privacy and Electronic Communications (EC Directive) Regulations 2003.

[Note: paragraph 3.9 of *DMG*]

- 8.9.3 G The steps required to satisfy the requirement in *CONC* 8.9.2R should depend upon the regularity with which the *firm* intends to accept sales leads from the *lead generator*. If sales leads provided by a *lead generator* are likely to be on a single or occasional basis, less rigorous checks should be required than for a specialist sales *lead generator*.

[Note: paragraph 3.9 (box) of *DMG*]

- 8.9.4 R A *firm* must take reasonable steps, where it has agreed to accept sales leads from a *lead generator* for *debt counselling* or *debt adjusting* or *providing*

credit information services, to ensure that the *lead generator*:

- (1) where it does not have a *Part 4A permission* for *debt counselling* and is not an *appointed representative* of a *firm* with such *permission*, does not carry on *debt counselling* in obtaining or passing on sales leads to the *firm*;
- (2) where it carries on *debt counselling*, has and continues to have a *Part 4A permission* for *debt counselling* or is an *appointed representative* of a *firm* with such *permission*;
- (3) where it does not have a *Part 4A permission* covering the relevant activity, does not claim to or imply that it provides *debt counselling* or *debt adjusting* or that it is *providing credit information services*;
[Note: paragraph 3.12 of *DMG*]
- (4) complies with applicable legal requirements, including the Consumer Protection from Unfair Trading Regulations 2008 in relation to any of its advice, any content of its website, any of its advertising and any of its commercial practices;
[Note: paragraph 3.9a of *DMG*]
- (5) makes the true nature of its services clear to *customers*, through any means of communication or promotion it uses;
[Note: paragraph 3.12 of *DMG*]
- (6) where it seeks a *customer's* personal data to pass on to a *firm* for a fee, it makes clear to the *customer* that the *customer's* personal data will be passed on to the *firm*;
[Note: paragraph 3.12c of *DMG*]
- (7) makes clear to a *customer* any financial interest it has in passing on a sales lead to the *firm*;
[Note: paragraph 3.12d of *DMG*]
- (8) makes clear, if asked by a *customer*, the nature of its relationship with the *firm*;
[Note: paragraph 3.12e of *DMG*]
- (9) does not falsely claim or imply in any way that it is or represents a charitable or *not-for-profit body* or government or local government organisation;
[Note: paragraph 3.12f of *DMG*]
- (10) communicates with customers consistent with, and promotes, services the *firm* is able to provide;
[Note: paragraph 3.12h of *DMG*]

- (11) complies with the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Data Protection Act 1998;
[Note: paragraph 3.11 of *DMG*]
- (12) does not send, or cause to be sent, an *electronic communication* to a *customer* (C) unless C has previously notified the *lead generator* that C consents for the time being to such communications being sent or caused to be sent by the *lead generator*;
[Note: paragraph 3.12j of *DMG*]
- (13) does not make or cause to be made by means of an automated calling system (which is capable of automatically initiating a sequence of calls to more than one destination in accordance with instructions stored in that system, and transmitting sounds which are not live speech for reception by *persons* at some or all of the destinations so called) a call to a *customer* (C), unless C has previously notified the caller that for the time being C consents to such communications being made by or caused to be made by the caller on the line in question; and
[Note: paragraph 3.12j of *DMG*]
- (14) enables *customers* to cancel using a clear and easy method their consent to be called or sent any communication.
[Note: paragraph 3.12m of *DMG*]

[Note: paragraphs 3.7 and 3.8 of *DMG*]

Guidance for firms

- 8.9.5 G The *FCA* would expect *firms* that agree with *lead generators* to accept sales leads in relation to *debt counselling* or *debt adjusting* to be able to identify, upon request, all the *lead generators* from which they have received leads (with the *FCA* authorisation number, where applicable).
- 8.9.6 G Claiming or implying a *person* is or represents, for example, a charitable organisation is likely to include operating a website which looks like, or is designed to look like, the website of such an organisation.
- 8.9.7 G In complying with *CONC* 8.9.4R a *firm* that agrees with a *lead generator* to accept sale leads should:
- (1) check with the Information Commissioner's Office that the *lead generator* is appropriately registered under the Data Protection Act 1998; and
 - (2) check the *lead generator's* Privacy and Electronic Communications (EC Directive) Regulations 2003 process documentation.

8.10 Conduct of business: providing credit information services

Application

- 8.10.1 R This section applies to:
- (1) a *firm* with respect to *providing credit information services* in relation to information relevant to the financial standing of an *individual*;
 - (2) a *firm* with respect to the activities set out in article 36H(3)(e) to (h) of the *Regulated Activities Order* (Operating an electronic system in relation to lending) in relation to a *borrower* under a *P2P agreement*.

Conduct

- 8.10.2 G The *Principles* apply to a *firm* with respect to *providing credit information services*. A *firm* providing such services should, for example, set out clearly in any communication to a *customer* the extent of the service it is able to offer.
- [Note: paragraph 3.46 of *DMG*]
- 8.10.3 R A *firm* must not:
- (1) claim to be able to remove negative but accurate information from a *customer's* credit file, including entries concerning adverse credit information and court judgments; or
[Note: paragraph 3.47ai of *DMG*]
 - (2) mislead a *customer* about the length of time that negative information is held on the *customer's* credit file or any official register; or
[Note: paragraph 3.47aii of *DMG*]
 - (3) claim that a new credit file can be created, such as by the *customer* changing address.
[Note: paragraph 3.47aiii of *DMG*]
- 8.10.4 G It is likely to be a contravention of the *Principles*, for example *Principles 6* and *Principle 7*, where a *firm*:
- (1) claims in a communication to a *customer* to be able to remove negative but accurate entries from a *customer's* credit file, but where the *customer* enquires about this service the *customer* is offered instead the *firm's* service as a *lender* or a *credit broker*; or
 - (2) fails to inform a *customer* that a *credit reference agency* will not respond to the *firm* taking steps in relation to the *customer's* credit file and will only send the *customer's* credit file to the *customer*.
[Note: paragraphs 3.47cd of *DMG*]

9 Credit reference agencies

9.1 Application

9.1.1 R This chapter applies to a *firm* with respect to *providing credit references*.

9.2 Conduct of business: correction of entries in credit reference agency files

9.2.1 R Within 10 *working days* after any of the following events:

- (1) the *credit reference agency* giving notice under section 159(2) of the *CCA* that it has removed an entry from the file kept by it about an *individual* or has amended such an entry (including where it has amended an entry by removing information from it); or
- (2) the *credit reference agency* giving notice under section 159(4) of the *CCA* that it has received a notice under section 159(3) requiring it to add a notice of correction to the file and intends to comply with the notice; or
- (3) the expiry of the period specified in an order of the *FCA* or the Information Commissioner under section 159(5) of the *CCA* as the period within which the order is to be complied with;

the *credit reference agency* must give notice of the particulars specified in *CONC 9.2.2R* to each *person* to whom at any time since the relevant date it has furnished information relevant to the financial standing of the *individual* concerned.

[**Note:** regulation 5 of SI 1977/330]

9.2.2 R The particulars referred to in *CONC 9.2.1R* are:

- (1) in relation to information included in any entry which has been removed or amended or which is referred to in a notice of correction:
 - (a) particulars of any entry which has been removed from the file and a statement that it has been removed;
 - (b) particulars of any entry which has been amended and of the amendment, or of the entry as amended; and
 - (c) particulars of the entry, together with a copy of the notice of correction; and
- (2) where the information did not include the entry which has been removed or amended or which is referred to in a notice of correction, but which (whether in the form of a rating or opinion or otherwise) was based in whole or in part on any such entry and has been, or falls

to be, modified by reason of the removal, amendment or notice:

- (a) particulars of the modified information; and
- (b) a statement that the information has been modified by reason of the removal, amendment or notice, as the case may be.

- 9.2.3 R In this section, "the relevant date" means the date one *month* immediately preceding the receipt by the *credit reference agency* from the *individual* of the request, particulars and fee referred to in section 158(1) of the *CCA*, or the request and fee (if a fee is payable) referred to in section 7(2) of the Data Protection Act 1998 and, if applicable, the receipt of any further information requested by the *credit reference agency* referred to in section 7(3) of that Act.

10 Prudential rules for debt management firms

10.1 Application and purpose

Application

- 10.1.1 R This chapter applies to:
- (1) a *debt management firm*; and
 - (2) a *not-for-profit debt advice body* that, at any point in the last 12 *months*, has held £1 million or more in *client money* or as the case may be, projects that it will hold £1 million or more in *client money* at any point in the next 12 *months*.

Application: professional firms

- 10.1.2 R (1) This chapter does not apply to an *authorised professional firm*:
- (a) whose main business is the practice of its profession; and
 - (b) whose *regulated activities* covered by this chapter are incidental to its main business.
- (2) A *firm's* main business is the practice of its profession if the proportion of income it derives from professional fees is, during its annual accounting period, at least 50% of the *firm's* total income (a temporary variation of not more than 5% may be disregarded for this purpose).
- (3) Professional fees are fees, commissions and other receipts receivable in respect of legal, accountancy, conveyancing and surveying services provided to clients but excluding any items receivable in respect of *regulated activities*.

Purpose

- 10.1.3 G This chapter builds on the *threshold condition* referred to at *COND 2.4* (Appropriate resources) by providing that a *firm* must meet, on a continuing basis, a basic solvency requirement. This chapter also builds on *Principle 4* which requires a *firm* to maintain adequate financial resources by setting out prudential requirements for a *firm* according to what type of *firm* it is.
- 10.1.4 G Prudential standards have an important role in minimising the risk of harm to *customers* by ensuring that a *firm* behaves prudently in monitoring and managing business and financial risks.
- 10.1.5 G More generally, having adequate prudential resources gives the *firm* a degree of resilience and some indication to *customers* of creditworthiness, substance and the commitment of its owners. Prudential standards aim to ensure that a *firm* has prudential resources which can provide cover for operational and compliance failures and pay redress, as well as reducing the possibility of a shortfall in funds and providing a cushion against disruption if the *firm* ceases to trade.
- 10.1.6 R A contravention of the *rules* in this chapter does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

10.2 Prudential resources requirements

General solvency requirement

- 10.2.1 R A *firm* must, at all times, ensure that it is able to meet its liabilities as they fall due.

General prudential resource requirement

- 10.2.2 R A *firm* must ensure that, at all times, its prudential resources are not less than its prudential resources requirement.

Prudential resources: relevant accounting principles

- 10.2.3 R A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its annual financial statements unless a *rule* requires otherwise.

Prudential resources requirement: firms carrying on other regulated activities

- 10.2.4 R The prudential resources requirement for a *firm* carrying on a *regulated activity* or activities in addition to those covered by this chapter, is the higher of:

- (1) the requirement which is applied by this chapter; and
- (2) the prudential resources requirement which is applied by another *rule* or requirement to the *firm*.

Prudential resources requirement

- 10.2.5 R On its *accounting reference date* in each year, a *firm* must calculate:
- (1) the total value of its *relevant debts under management* outstanding on that date; and
 - (2) the sum of:
 - (a) 0.25% of the first £5 million of that total value;
 - (b) 0.15% of the next £95 million of that total value; and
 - (c) 0.05% of any remaining total value.
- 10.2.6 R The total value of a *firm's relevant debts under management* outstanding referred to in *CONC 10.2.5R(1)* is the sum of all the *firm's customers' relevant debts under management*.
- 10.2.7 G The definition of *relevant debts under management* refers to a debt due under a *credit agreement* or a *consumer hire agreement* in relation to which the *firm* is carrying on *debt adjusting* or an activity connected to that activity. The reference to “debt due” covers not only amounts that are payable at the time the prudential resources requirement is calculated but also amounts the *borrower* is presently obliged to pay under the *credit agreement* in the future.
- 10.2.8 R The prudential resources requirement for a *firm* to which this chapter applies is the higher of:
- (1) £5,000; or
 - (2) the sum calculated in accordance with *CONC 10.2.5R (2)*;
- for the period until (subject to *CONC 10.2.13R*) its next *accounting reference date*.
- 10.2.9 R To determine a *firm's* prudential resources requirement for the period beginning on the date on which it obtains *Part 4A permission* and ending on the day before its next *accounting reference date*, the *firm* must carry out the calculation in *CONC 10.2.5R(2)* on the basis of the total value of *relevant debts under management* the *firm* projects will be outstanding on the day before its next *accounting reference date*.

What is not included as relevant debts under management

- 10.2.10 G Activities carried on by a *person* acting as an insolvency practitioner (within section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989) or by a *person* acting in reasonable contemplation of that *person's* appointment as an insolvency practitioner are excluded from the *regulated activity* of *debt adjusting*. A debt in relation to which a *person* is acting in such a capacity is, therefore, excluded from the calculation of its *relevant debts under management* (but a debt in relation to which the same *person* is not acting in such capacity and is carrying on *debt-adjusting* is included in the calculation).

Determining the prudential resources requirement

- 10.2.11 G If a *firm* has 1000 *relevant debts under management* and each of those debts is £10,000, the total value of the *firm's relevant debts under management* is £10,000,000. If the *firm* does not carry on any other *regulated activity* to which another higher prudential resources requirement applies, its prudential resources requirement is £20,000. This is calculated as follows:

$$(1) \quad 0.25\% \times £5,000,000 = £12,500; \text{ and}$$

$$(2) \quad 0.15\% \times £5,000,000 = £7,500.$$

- 10.2.12 G If during the following year 20% (£200) of each *relevant debt under management* is paid off by the *borrower* or *hirer* leaving an outstanding balance of £800 on each *relevant debt under management*, and during that year the *firm* does not carry on *debt adjusting* in relation to any further debts due under *credit agreements* or *consumer hire agreements*, the total value of the *firm's relevant debt under management* is £8,000,000. If the *firm* does not carry on any other *regulated activity* to which another higher prudential resources requirement applies, its prudential resources requirement is £17,000. This is calculated as follows:

$$(1) \quad 0.25\% \times £5,000,000 = £12,500; \text{ and}$$

$$(2) \quad 0.15\% \times £3,000,000 = £4,500.$$

Recalculating the prudential resources requirement

- 10.2.13 R If a *firm* experiences a greater than 15% increase in the total value of its *relevant debts under management* compared to the value used in its last prudential resources requirement calculation, it must recalculate its prudential resources requirement using the new total value of its *relevant debts under management*.
- 10.2.14 R A *firm* must notify the *FCA* of any change in its prudential resources requirement within 14 *days* of that change.

10.3 Calculation of prudential resources

10.3.1 R (1) A *firm* must calculate its prudential resources only from the items which are eligible to contribute to a *firm's* prudential resources (see *CONC* 10.3.2R).

(2) In arriving at its calculation of its prudential resources a *firm* must deduct certain items (see *CONC* 10.3.3R).

10.3.2 R Table: Items which are eligible to contribute to the prudential resources of a firm

	Item	Additional explanation
1	<i>Share capital</i>	This must be fully paid and may include:
		(1) ordinary <i>share capital</i> ; or
		(2) preference <i>share capital</i> (excluding preference <i>shares</i> redeemable by shareholders within two years).
2	Capital other than <i>share capital</i> (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i>)	The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account. The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i> :
		(1) capital account, that is the account:
		(a) into which capital contributed by the <i>partners</i> is paid; and
		(b) from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if:
		(i) he ceases to be a <i>partner</i> and an equal amount is transferred to another such account by his former <i>partners</i> or any <i>person</i> replacing him as their <i>partner</i> ; or
		(i) he ceases to be a partner and an equal amount is transferred to another such account by his former partners or any person replacing him as their partner; or
		(ii) the partnership is otherwise dissolved or wound up; and
		(2) current accounts according to the most recent financial statement.
		For the purpose of the calculation of capital resources in respect of a <i>defined benefit occupational pension scheme</i> :

		(1)	a <i>firm</i> must derecognise any <i>defined benefit asset</i> ;
		(2)	a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i> , provided that the election is applied consistently in respect of any one financial year.
3	Reserves (Note 1)	These are, subject to Note 1, the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i> .	
		For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:	
		(1)	a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;
		(2)	a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;
		(3)	in respect of a <i>defined benefit occupational pension scheme</i> :
		(a)	a <i>firm</i> must derecognise any <i>defined benefit asset</i> ;
		(b)	a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i> , provided that the election is applied consistently in respect of any one financial year.
4	Interim net profits (Note 1)	If a <i>firm</i> seeks to include interim net profits in the calculation of its capital resources, the profits have, subject to Note 1, to be verified by the <i>firm's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.	
5	Revaluation reserves		
6	Subordinated loans/debt	Subordinated loans/debts must be included in capital on the basis of the provisions in this chapter that apply to	

	subordinated loans/debts.
Note:	
1	Reserves must be audited and interim net profits, general and collective provisions must be verified by the <i>firm's</i> external auditor unless the <i>firm</i> is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemptions from audit)) or, where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts.

10.3.3 R Table: Items which must be deducted in arriving at prudential resources

1	<i>Investments</i> in own shares
2	<i>Investments</i> in subsidiaries (Note 1)
3	Intangible assets (Note 2)
4	Interim net losses (Note 3)
5	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 3)
Notes	<p>1 <i>Investments</i> in subsidiaries are the full balance sheet value.</p> <p>2 Intangible assets are the full balance sheet value of goodwill, capitalised development costs, brand names, trademarks and similar rights and licences.</p> <p>3 The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the period following the date as at which the capital resources are being computed.</p>

Subordinated loans/debt

10.3.4 R A subordinated loan/debt must not form part of the prudential resources of the *firm* unless it meets the following conditions:

- (1) it has an original maturity of:
 - (a) at least five years; or
 - (b) it is subject to five years' notice of repayment;
- (2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
- (3) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding up of the *firm*;
- (4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated loan/debt must

be limited to petitioning for the winding up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;

- (5) the subordinated loan/debt must not become due and payable before its stated final maturity date, except on an event of default complying with (3);
- (6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
- (7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the *firm* against subordinated amounts owed to them by the *firm*;
- (8) the terms of the subordinated loan/debt must be set out in a written agreement that contains terms that provide for the conditions set out in this *rule*; and
- (9) the loan/debt must be unsecured and fully paid up.

- 10.3.5 R When calculating its prudential resources, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

a – b		
where:		
a	=	Items 1 - 5 in the Table of items which are eligible to contribute to a <i>firm</i> 's prudential resources (see <i>CONC</i> 10.3.2R)
b	=	Items 1 - 5 in the Table of items which must be deducted in arriving at a <i>firm</i> 's prudential resources (see <i>CONC</i> 10.3.3R)

- 10.3.6 G *CONC* 10.3.5R can be illustrated by the examples set out below:

- (1)

Share Capital	£20,000
Reserves	£30,000
Subordinated loans/debts	£10,000
Intangible assets	£10,000
As subordinated loans/debts (£10,000) are less than the total of share capital + reserves – intangible assets (£40,000) the <i>firm</i> need not exclude any of its subordinated loans/debts pursuant to <i>CONC</i> 10.3.5R. Therefore total prudential resources will be £50,000.	
- (2)

Share Capital	£20,000
Reserves	£30,000
Subordinated loans/debts	£60,000

Intangible assets	£10,000
As subordinated loans/debts (£60,000) exceed the total of share capital + reserves – intangible assets (£40,000) by £20,000, the <i>firm</i> should exclude £20,000 of its subordinated loans/debts when calculating its prudential resources. Therefore total prudential resources will be £80,000.	

11 Cancellation

11.1 The right to cancel

11.1.1 R Except as provided for in *CONC* 11.1.2R or where *PROF* 5.4.1R(1) or (2) applies, a *consumer* has a right to cancel a *distance contract* without penalty and without giving any reason, within 14 calendar days where that contract is:

- (1) a *credit agreement*;
- (2) an agreement between a *consumer* and a *firm* the subject matter of which comprises or relates to *debt counselling*, *debt adjusting*, *providing credit information services* or *providing credit references*, other than an agreement that relates to any of those activities in relation to a *consumer hire agreement*.

[**Note:** article 6(1) of the *Distance Marketing Directive* in relation to distance contracts that are consumer credit agreements]

11.1.2 R (1) For a *credit agreement* there is no right to cancel under *CONC* 11.1.1R, unless (2) or (3) applies, in respect of:

- (a) a regulated consumer credit agreement (within the meaning of that section) to which section 66A (right to withdraw) of the *CCA* applies;
- (b) a *credit agreement* under which a *lender* provides *credit* to a *consumer* and where the *consumer's* obligation to repay is secured by a legal mortgage on *land*;
- (c) a *credit agreement* cancelled under regulation 15(1) of the Consumer Protection (Distance Selling) Regulations 2000 (automatic cancellation of a related credit agreement);
- (d) a *credit agreement* cancelled under regulation 23 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (automatic termination of credit agreement); and

- (e) a *restricted-use credit agreement* to finance the purchase of *land* or an existing building, or an agreement for a bridging loan in connection with the purchase of *land* or an existing building.
- (2) There is a right to cancel under *CONC 11.1.1R* where the *lender* has not complied with *CONC 2.7.6R* (requirement to communicate terms and conditions etc), unless the *distance contract* falls with the exception in *CONC 2.7.12R* and the *firm* has complied with the requirements of that *rule*.
- (3) There is a right to cancel under *CONC 11.1.1R* where the circumstances in *CONC 2.7.12R* apply but the *lender* has not supplied all the contractual terms and conditions and information as required in *CONC 2.7.12R*.

11.1.3 G Section 66A of the *CCA* (right to withdraw) does not apply to an agreement for *credit* exceeding £60,260, an agreement secured on *land*, a *restricted-use credit agreement* to finance the purchase of *land* or an agreement for a bridging loan in connection with the purchase of *land*. Section 67 of the *CCA* (cancellable agreements) applies to *regulated credit agreements* (apart from agreements secured on *land*, *restricted-use credit agreements* to finance the purchase of *land* or agreements for a bridging loan in connection with the purchase of *land* and agreements covered by section 66A) and *consumer hire agreements* (to which this section does not apply) in the circumstances specified in the section. A *customer* with a right to cancel under section 67 of the *CCA* may choose to cancel the agreement under that section or under *CONC 11.1.1R*.

11.1.4 G A *firm* may provide longer or additional cancellation rights voluntarily but, if it does, these should be on terms at least as favourable to the *customer* as those in this chapter, unless the differences are clearly explained.

Beginning of cancellation period

- 11.1.5 R The cancellation period begins:
- (1) either from the day the *distance contract* is made; or
 - (2) from the day on which the *consumer* receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under *CONC 2.7.6R* or under *CONC 2.7.12R*, if that is later than the date referred to in (1) above.

[**Note:** article 6(1) of the *Distance Marketing Directive* in relation to distance contracts]

Disclosing the right to cancel

- 11.1.6 R (1) The *firm* must disclose to a *consumer* in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract

to which the right to cancel applies under *CONC 11.1.1R*, and in a *durable medium*, the existence of the right to cancel, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which the notification of cancellation should be sent.

- (2) This *rule* applies only where a *consumer* would not otherwise receive the information in (1) under a *rule* in this sourcebook from the *firm* (such as under *CONC 2.7.2R* to *CONC 2.7.5R* (the distance marketing disclosure rules)).

Exercising the right to cancel

- 11.1.7 R If a *consumer* exercises the right to cancel the *consumer* must, before the expiry of the cancellation period, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a *durable medium* available and accessible to the recipient, is dispatched before the cancellation period expires.

[**Note:** article 6(6) of the *Distance Marketing Directive* for distance contracts]

- 11.1.8 G The *firm* should accept any indication that the *consumer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as the date when the notification was dispatched.

Record keeping

- 11.1.9 R The *firm* must make adequate records concerning the exercise of a right to cancel and retain them for at least three years.

Effects of cancellation

- 11.1.10 R By exercising a right to cancel, a *consumer* withdraws from the contract and the contract is terminated.
- 11.1.11 R (1) When a *consumer* exercises the right to cancel the *consumer* may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The amount payable must not:
- (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;
 - (b) in any case be such that it could be construed as a penalty.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive* in

relation to distance contracts]

- (2) The *firm* may not require a *consumer* to pay any amount on the basis of this *rule* unless it can prove that the *consumer* was duly informed about the amount payable and, in conformity with the distance marketing disclosure rules (*CONC 2.7.2R* to *CONC 2.7.5R*). However, in no case may the *firm* require such payment if it has commenced the performance of the contract before expiry of the cancellation period without the *consumer's* prior request.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to distance contracts]

Firm's obligations on cancellation

- 11.1.12 R The *firm* must, without undue delay and within 30 calendar days, return to the *consumer* any sums it has received from the *consumer* except for any amount that the *consumer* may be required to pay under *CONC 11.1.11R*. This period begins from the day on which the *firm* receives the notification of cancellation.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to distance contracts]

Consumer's obligations on cancellation

- 11.1.13 R The *firm* is entitled to receive from the *consumer* any sums or property the *consumer* has received from the *firm* without any undue delay and no later than within 30 calendar days. This period begins from the day on which the *consumer* dispatches the notification of cancellation.

[**Note:** article 7(5) of the *Distance Marketing Directive* in relation to distance contracts]

- 11.1.14 R Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

11.2 Right of withdrawal: P2P agreements

Application

- 11.2.1 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*.
- 11.2.2 R This section does not apply to a *P2P agreement* under which *credit* exceeding £60,260 is, was or would be provided.

Right to cancel

- 11.2.3 R A *firm* must ensure that a *P2P agreement* that the *firm* makes available to a

borrower and a *lender* provides for the following contractual rights and obligations and procedure for and effect of the exercise of those rights and obligations:

- (1) a right for the *borrower*:
 - (a) to withdraw from the agreement (“the right of withdrawal”);
 - (b) without giving any reason; and
 - (c) by giving oral or written notice of the withdrawal to the *firm* (on behalf of the *lender*) before the end of the period of 14 days:
 - (i) beginning with the day after the *P2P agreement* is made; or
 - (ii) beginning with the day on which the *borrower* receives the contractual terms and conditions of the service and any other pre-contractual information required, as the case may be, under *CONC* 4.3, if that is later than the date in (1);
- (2) where written notice is given of the right of withdrawal by *electronic means*:
 - (a) it may be sent to the number or electronic address specified for the purpose in the agreement; and
 - (b) where it is so sent, it is to be regarded as having been received by the *firm* (on behalf of the *lender*) at the time it is sent;
- (3) where written notice is given of the right of withdrawal, other than by *electronic means*:
 - (a) it may be sent by post to, or left at, the postal address specified for the purpose in the agreement; and
 - (b) where it is sent by post to that address, it is to be regarded as having been received by the *firm* (on behalf of the *lender*) at the time of posting;
- (4) where the *borrower* exercises the right of withdrawal from a *P2P agreement*:
 - (a) the *borrower* must repay to the *firm* (on behalf of the *lender*) or the *lender* any *credit* provided and the interest accrued on it (at the rate provided for under the agreement); but
 - (b) the *borrower* is not liable to pay to the *firm* (on behalf of the *lender*) or the *lender* any compensation, fees or charges, except any non-returnable charges paid by the *lender* or by the *firm* (on behalf of the *lender*) to a public administrative body;

- (5) the effect of exercising the right to withdraw is that the obligations of the *borrower* under the agreement cease to have effect except for the obligation in (4); and
- (6) where an amount is payable where (4) applies, the agreement may provide that the amount must be paid without undue delay and no later than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period the agreement may provide that the sum may be recovered from the *borrower* as a debt).

11.2.4 R A *firm* must ensure that a *P2P agreement* that it makes available to a *lender* and a *borrower* does not provide for any other obligations of the *borrower* in connection with the exercise of the rights in *CONC 11.2.3R*.

Amend the following as shown.

12 Requirements for firms with interim permission for credit-related regulated activities

...

12.1.2 G The purpose of these *rules* is to provide that certain provisions of the *Handbook* or of a Regulatory Guide:

...

12.1.3 R The modules or parts of the modules of the *appropriate regulator's Handbook of rules and guidance* or of a Regulatory Guide listed in the table in *CONC 12.1.4R* to this chapter:

...

12.1.4 R ...

Module	Disapplication or modification
Senior Management Arrangements, Systems and Control sourcebook (<i>SYSC</i>)	...
Fees manual (<i>FEES</i>)	...
<u>Threshold Conditions (<i>COND</i>)</u>	<u>Guidance applies with necessary modifications to reflect Chapter 4 of Part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (see Note 1).</u>

	<p><u>Note 1</u> <u>A firm is treated as having an interim permission on and after 1 April 2014 to carry on credit related regulated activity under the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 if it met the conditions set out in Chapter 4 of Part 8 of that Order. Section 55B(3) of the Act (satisfaction of threshold conditions) does not require the FCA or PRA to ensure that the firm will satisfy, and continue to satisfy, in relation to the credit related regulated activities for which it has an interim permission, the threshold conditions for which that regulator is responsible. The FCA or PRA can, however, exercise its power under section 55J of the Act (variation or cancellation on initiative of regulator) or under section 55L of the Act (in the case of the FCA) or section 55M of the Act (in the case of the PRA) (imposition of requirements by the regulator) in relation to a firm if, among other things, it appears to the FCA or PRA that the firm is failing, or is likely to fail, to satisfy the threshold conditions in relation to the credit related regulated activities for which it has an interim permission for which the regulator is responsible. The guidance in COND should be read accordingly.</u></p>
<p><u>Client Assets (CASS)</u></p>	<p><u>CASS does not apply:</u></p> <p><u>(1) to a firm with only an interim permission; or</u></p> <p><u>(2) with respect to credit-related regulated activity for which a firm has an interim permission that is treated as a variation of permission;</u></p> <p><u>if the firm acts in accordance with the provisions of paragraphs 3.42 and 3.43 of the Debt management (and credit repair services) guidance (OFT366rev) previously issued by the Office of Fair Trading, as they were in effect immediately before 1 April 2014.</u></p>
<p><u>Supervision manual (SUP)</u></p>	<p><u>SUP 3 (Auditors), SUP 10A (FCA Approved persons) and SUP 12 (Appointed representatives) (see Note 2) do not apply:</u></p> <p><u>(1) to a firm with only an interim permission; or</u></p> <p><u>(2) with respect to a credit-related regulated activity for which a firm has an interim permission that is treated as a variation of permission.</u></p>
	<p><u>Note 2</u> <u>A firm may not be a principal in relation to a regulated activity for which it has interim permission. A firm with interim permission may, however, be an appointed representative in relation to a regulated activity which it does not have interim permission to carry on (article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).</u></p>

<p><u>SUP 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements) applies:</u></p> <p>(1) <u>with necessary modifications to reflect Chapter 4 of Part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (see Note 3);</u></p> <p>(2) <u>with the modifications to SUP 6.3.15D and SUP 6.4.5D set out in paragraph 1.2 of this Schedule.</u></p>	
<p>Note 3</p>	<p><u>If a firm with <i>interim permission</i> applies to the appropriate regulator under section 55A of the Act for <i>Part 4A permission</i> to carry on a <i>regulated activity</i> or under section 55H or 55I of the Act to vary a <i>Part 4A permission</i> that the <i>firm</i> has otherwise than by virtue of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 by adding a <i>regulated activity</i> to those to which the <i>permission</i> relates, the application may be treated by the appropriate regulator as relating also to some or all of the <i>regulated activities</i> for which the <i>firm</i> has <i>interim permission</i>.</u></p>
<p><u>SUP 11 (Controllers and close links) does not apply to a <i>firm</i> with only an <i>interim permission</i> (see Note 4).</u></p>	
<p>Note 4</p>	<p><u>A <i>firm</i> is not to be regarded as an <i>authorised person</i> for the purposes of Part 12 of the Act (control over authorised person) if it has only an <i>interim permission</i> (see article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).</u></p>
<p><u>For a <i>firm</i> with only an <i>interim permission</i></u></p> <p>(1) <u>SUP 15.5.1R, SUP 15.5.2G, SUP 15.5.4R, SUP 15.5.5R are modified so that the words “reasonable advance”, “and the date on which the <i>firm</i> intends to implement the change of name” and “and the date of the change” are omitted; and</u></p> <p>(2) <u>SUP 15.7.1R, SUP 15.7.4R and SUP 15.7.5AR are modified so that a notification of a change in name, address or telephone number must be made using the online Consumer Credit Interim Permissions system available on the FCA’s website.</u></p> <p>(3) <u>If in a notification to the FCA the <i>firm</i> is required to enter its FRN number it must include its <i>interim permission</i> number.</u></p>	
<p><u>SUP 16 (Reporting requirements) does not apply to a <i>firm</i> with only an <i>interim permission</i>.</u></p>	
<p><u>SUP 16.11 and SUP 16.12 apply to a <i>firm</i>, which was an <i>authorised person</i> immediately before 1 April 2014, with an <i>interim permission</i> that is treated as a variation of <i>permission</i> with respect to <i>credit-related regulated activity</i> as if the</u></p>	

	<u>changes to SUP 16.11 and SUP 16.12 effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made.</u>
<u>Disputes Resolution: Complaints sourcebook (DISP)</u>	<u>DISP 1.10 (Complaints reporting rules) and DISP 1.10A (Complaints data publication rules) do not apply to a person with only an interim permission.</u>
	<u>DISP 1.10 (Complaints reporting rules) and DISP 1.10A (Complaints data publication rules) apply to a firm, which was an authorised person immediately before 1 April 2014, with an interim permission that is treated as a variation of permission with respect to credit-related regulated activity as if the changes to DISP 1.10 and DISP 1.10A effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made.</u>
<u>Consumer Credit sourcebook (CONC)</u>	<u>CONC 10 (Prudential requirements for debt management firms) does not apply:</u> <u>(1) to a firm with only an interim permission; or</u> <u>(2) with respect to credit-related regulated activity for which a firm has an interim permission that is treated as a variation of permission.</u>
<u>Perimeter Guidance manual (PERG)</u>	<u>For a firm only with an interim permission, PERG 5.11.13G is modified so that following the words “which does not otherwise consist of carrying on regulated activities” is added “(other than a regulated activity carried on by a firm only with an interim permission listed in article 59A of the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(No.2) Order 2013 (SI 2013/1881) which is to be disregarded for this purpose)”.</u> <u>Article 59A enables a firm with only an interim permission which would be able to benefit from article 72B of the Regulated Activities Order, but for carrying on the new consumer credit regulated activities to continue to do so.</u>

- 12.1.5 D A firm with interim permission wishing to make an application to vary its interim permission by removing a regulated activity from those to which the interim permission relates or cancel its interim permission must apply using the online Consumer Credit Interim Permissions system available on the FCA’s website.

After CONC 12 insert the following new provisions. The text is not underlined.

13 Guidance on the duty to give information under sections 77, 78 and 79 of

the Consumer Credit Act 1974

13.1 Application

13.1.1 G This chapter:

- (1) applies to a *firm* with respect to *consumer credit lending* and a *firm* with respect to *consumer hiring*;
- (2) does not apply to the obligation in or under section 78(4), (4A) or (5) of the *CCA* on a *lender* to give regular statements where *running-account credit* is provided under a *regulated credit agreement*.

Guidance

- 13.1.2 G (1) The *FCA* takes the view that sections 77, 78 and 79 of the *CCA* should be read in a way that allows the *borrower* or *hirer* to obtain the information needed in order to be properly informed without imposing unnecessary burden on *firms*.
- (2) The statement referred to in the relevant section must be prepared according to the information to which it is ‘practicable’ for the *firm* to refer. In the *FCA*’s view, this means practicable at the time of the request and includes information which can reasonably be obtained from third parties.
- (3) *Firms* should take steps to ensure that information is preserved and kept available to be used to give information to a *borrower* or *hirer*.

The request and the duty to give

- 13.1.3 G (1) A request must be from or on behalf of the *borrower* under sections 77 and 78 or from or on behalf of a *hirer* under section 79. This would include a friend or relative, a solicitor, a claims management company or other third party. Under the Data Protection Act 1998 and the Data Protection Principles, the *lender* or *owner* is not allowed to reveal such information to a third party without the authority of the *borrower* or *hirer*. It should therefore satisfy itself that the *person* making the request has proper authority to obtain the information. If a copy of such authority is not enclosed with the request, the *lender* or *owner* is entitled to reply by asking to see the authority.
- (2) Where there are two or more *borrowers* or *hirers* and the request comes from one only, it must be nevertheless complied with, and the response must be given to both (or all) *borrowers* or *hirers*.
- (3) If the recipient considers that another *person* is the *lender* or *owner*, the recipient should either inform the applicant of who it considers is the correct recipient or pass the request on to that *person*.
- (4) In accordance with the sections referred to in (1) the *firm* must ‘give’ a copy of the executed agreement and any other document referred to

in it and the required statement. In the *FCA's* view, sending a copy of them by ordinary second class post will suffice. Guidance on what constitutes a copy is given below and found in the case of *Carey v HSBC Bank plc* [2009] EWHC 3417 (QB).

- (5) The duty under the relevant section does not apply if no sum is, or will or may become, payable by the *borrower* or *hirer* under the agreement. This is irrespective of whether the agreement may have been terminated.

The copy agreement

- 13.1.4 G (1) The copy of the executed agreement should be a 'true copy' of the original. However, as confirmed in the case of *Carey v HSBC Bank plc* [2009] EWHC 3417 (QB), in this context the term 'true copy' does not necessarily mean a carbon, photocopy, microfiche copy or other exact copy of the signed agreement. There is no obligation to provide a copy which includes a copy of the signature.
- (2) The *firm* can reconstitute a copy. It can do this by re-populating a template of the relevant agreement form with the details of the specific agreement taken from its records. If the *firm* does provide a reconstituted copy, it should explain that that is what it has done, to avoid misleading the *customer* that this is a contemporaneous copy.
 - (3) The terms and conditions should be those applicable at the time the agreement was executed. The name and address at the time of execution must be included.
 - (4) The reconstituted agreement should contain a heading prescribed by the *CCA* and any relevant cancellation notice.
 - (5) If the reason why no copy is given in response to a request under these sections is that there never was an executed agreement, the *firm* should acknowledge this in its response.
 - (6) If the agreement has been varied, the duty is to provide not only a copy of the agreement as originally executed but also either:
 - (a) a copy of the latest variation given in accordance with section 82(1) of the *CCA* relating to each discrete term of the agreement which has been varied; or,
 - (b) a clear statement of the terms of the agreement as varied.
 - (7) Further, section 180(1)(b) of the *CCA* and regulation 3(2) of the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 expressly allow certain matters to be omitted from the copy. There may be excluded from the copy of the executed agreement to be provided under these sections:

- (a) any information relating to the *borrower*, *hirer* or surety, or information included for the use of the *lender* or *owner* only, which is not required to be included by the or any regulations made under the *CCA* as to the form and content of the agreement;
- (b) any signature box, signature or date of signature;
- (c) in the case of *pawn* agreements, any description of the article taken in *pawn*.

The statement of account

- 13.1.5 G If the *firm* possesses insufficient information to enable it to ascertain the amount and date of any sum which is to become payable, it is sufficient to indicate the basis on which they would fall to be ascertained.

Failure to comply

- 13.1.6 G (1) Failure to comply with the provisions means that the agreement becomes unenforceable while the failure to comply persists, and the courts have no discretion to allow enforcement.
- (2) In such cases, a *firm* should in no way, either by act or omission, mislead a *customer* as to the enforceability of the agreement.
- (3) In particular, a *firm* should not in such cases either threaten court action or other enforcement of the debt or imply that the debt is enforceable when it is not.
- (4) The *firm* should, in any communication or request for payment in such cases, make clear to the *customer* that although the debt remains outstanding it is unenforceable.
- (5) In the judgment of *McGuffick –v- The Royal Bank of Scotland plc* [2009] EWHC 2386 (Comm) Flaux J held in a case under section 77 of the *CCA* that passing details of a debt to a *credit reference agency* and related activities do not constitute enforcement under the *CCA*. He also held that steps taken with a view to enforcement, including demanding payment from a claimant, issuing a default notice, threatening legal action and the actual bringing of proceedings, are not themselves 'enforcement' under the *CCA*. On the other hand he confirmed that the actions listed under sections 76(1) and 87(1) of the *CCA* did amount to enforcement notwithstanding that some of the actions 'less obviously' amounted to enforcement. These actions are demanding earlier payment, recovering possession of *goods* or *land*, treating any right conferred on the debtor by the agreement as terminated, restricted or deferred, enforcing any *security* and terminating the agreement.
- (6) While Flaux J agreed with the decision of HHJ Simon Brown QC

(sitting as a Deputy High Court Judge) in *Tesco Personal Finance v Rankine* [2009] C.C.L.R. 3 that commencing proceedings was not enforcement, but a step taken with a view to enforcement, both he and HHJ Simon Brown appear to have been drawing a distinction between commencing proceedings and entering judgment in those proceedings.

- (7) This *guidance* deals only with the question of whether an agreement is unenforceable in relation to sections 77, 78 and 79 of the *CCA*. A *lender's* rights to enforce an agreement may be restricted for a variety of reasons, by the *Act*, by or under the *CCA* and by virtue of the general law.
- (8) However, where a *firm* is aware that an agreement is unenforceable because of non-compliance with an information request under section 77, 78 or 79 of the *CCA*, a *firm* should make it clear when communicating to a *customer* about a debt that the debt is in fact unenforceable. Failure to do so, in that case, would in the *FCA's* view unfairly mislead the *customer* by omission. Any communication that implies expressly or otherwise that a debt is enforceable when it is known that it is not, would be misleading. One way to avoid this would be for the *firm* to explain to the *customer* the full meaning of 'unenforceable'.

14 Requirement in relation to agents

14.1 Application

- 14.1.1 R This chapter applies to a *firm* with respect to a *credit-related regulated activity*.

Requirements

- 14.1.2 R A *firm* must not appoint an individual, who is not an *authorised person* or an *exempt person*, to act as an agent of the *firm*, in carrying on *regulated activities* of the *firm* unless all of the following conditions are met at the date of the individual's appointment and while the individual continues to act as the *firm's* agent:
- (1) the *firm* appoints the individual as the *firm's* agent;
 - (2) the individual works as agent only for the *firm* and not as agent for any other principal;
 - (3) the *firm* has a written contract with the individual which:
 - (a) sets out effective measures for the *firm* to control the individual's activities when acting on its behalf in the course of its business; and

- (b) requires the individual to make clear to *customers* that the individual is representing the *firm* as the individual's principal and the name of the *firm*;
 - (4) (in the case of collecting debts) receipt of repayments by the individual is treated as receipt by the *firm*; and
 - (5) the *firm* accepts full responsibility for the conduct of the individual when the individual is acting on the *firm*'s behalf in the course of the *firm*'s business.
- 14.1.3 G A *firm* in *CONC* 14.1.2R would need to have a *Part 4A permission* for every activity the individual carries on as its agent for which the *firm* would need permission if it were carrying on the activity itself.
- 14.1.4 R Where a *firm* appoints an agent in accordance with *CONC* 14.1.2R to carry on the business of the *firm*:
- (1) the *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the agent with the *firm*'s obligations under the *regulatory system*; and
 - (2) the *firm* must take all reasonable steps to identify conflicts of interest between the agent and a *client* of the *firm* that arise or may arise in the course of the *firm* carrying on *regulated activities* or *ancillary activities*.

15 Second charge lending

15.1 Application

- 15.1.1 R This chapter applies to:
- (1) a *firm* with respect to *consumer credit lending* in relation to *regulated credit agreements* secured on *land*; and
 - (2) a *firm* with respect to *credit broking* in relation to *credit agreements* secured on *land*.
- 15.1.2 G *Firms* which carry on *consumer credit lending* or *credit broking* should comply with all *rules* which apply to that *regulated activity* in *CONC* and other parts of the *Handbooks*. For example, *CONC* 7 applies to matters concerning arrears, default and recovery (including repossession) and applies generally to agreements to which this chapter applies. This chapter sets out specific requirements and *guidance* that apply in relation to agreements secured on *land*. *Regulated mortgage contracts* and *regulated home purchase plans* are not *regulated credit agreements* and are excluded, to the extent specified in article 36E of the *Regulated Activities Order*, from *credit broking*.

Conduct

- 15.1.3 G The financial promotion *rules* in *CONC 3* apply to *firms' financial promotions* concerning *credit agreements* secured on *land*, apart from the extent to which a *financial promotion* or communication concerns *qualifying credit*. *CONC 3.3.1R* requires *financial promotions* to be clear fair and not misleading; *firms* should take particular care with respect to explaining the nature of the *credit* to be provided and the costs of borrowing.
[Note: paragraph 3.2 of *SCLG*]
- 15.1.4 R A *firm* must make clear in advance the purpose of any visit off trade premises (which has the same meaning as in section 48 of the *CCA*) at which the *customer* may enter into a *regulated credit agreement*.
[Note: paragraph 3.8 of *SCLG*]
- 15.1.5 R In good time before a *credit agreement* is made and, where section 58 applies, before an unexecuted agreement is sent to the *customer* for signature a *firm* must:
- (1) disclose key contract terms and conditions of the prospective *credit agreement*;
[Note: paragraph 2.1 of *SCLG*]
 - (2) disclose any features of the prospective *credit agreement* which carry a particular risk to the *customer*;
[Note: paragraph 3.4 of *SCLG*]
 - (3) inform the *customer* of the consequences of missing payments or of making underpayments, including the imposition of default charges, the risk of repossession of the *customer's* home, in relation to the *customer's* credit record and of inability to obtain *credit* in the future;
[Note: paragraph 3.4 of *SCLG*]
 - (4) inform the *customer* about the circumstances in which the rates or charges may change, in particular, if they may be varied at the discretion of the *firm* or can vary subject to a reference rate of interest; and
[Note: paragraphs 3.6 and 4.4 of *SCLG*]
 - (5) if the rate of interest can vary subject to a reference rate of interest, other than that of the Bank of England's base rate, inform the *customer* of the reference rate in question and the rate to be applied.
[Note: paragraph 3.6 of *SCLG*]
- 15.1.6 G Where appropriate, the disclosure required by *CONC 15.1.4R* should be explained orally to the *customer*.
[Note: paragraph 3.4 of *SCLG*]

- 15.1.7 R Where a *firm* has reasonable grounds to suspect that the *customer* does not understand material aspects of the obligations they will take on and the resulting risks, under a *regulated credit agreement*, the *firm*:
- (1) must not enter into a *regulated credit agreement*; and
 - (2) must provide further explanation of any such obligations or risks.
[Note: paragraph 3.5 of *SCLG*]
- 15.1.8 R Before a *customer* enters into a *regulated credit agreement*, the *firm* must:
- (1) encourage the *customer* to read all contractual documentation carefully;
[Note: paragraph 4.2 of *SCLG*]
 - (2) take reasonable steps to ensure the *customer* has understood the nature of the obligations the *customer* will take on and the resulting risks;
[Note: paragraph 3.5 of *SCLG*]
 - (3) encourage the *customer* to obtain independent advice; and
[Note: paragraphs 2.1 and 4.2 of *SCLG*]
 - (4) permit the *customer* an adequate opportunity to seek and obtain such advice.
[Note: paragraph 2.1 of *SCLG*]
- 15.1.9 G Before a *regulated credit agreement* secured on *land* is entered into:
- (1) the *firm* should consider the adequate explanations it should give to the *customer* under *CONC* 4.2; and
[Note: paragraph 3.1 (box) of *ILG*]
 - (2) the *firm* is required under *CONC* 5.2.2R(1) to assess the potential for commitments under the agreement to adversely impact the *customer's* financial situation.
[Note: paragraphs 1.14 and 4.1 of the *ILG*]
- 15.1.10 G In accordance with *PRIN* 9 (customer: relationships of trust):
- (1) a *firm* must take reasonable steps to ensure the suitability of its advice, which would include acting in the best interests of a *customer* where the *firm* makes a recommendation;
 - (2) if it appears to the *firm* that entering into a *regulated credit agreement* secured on *land* is not in the best interests of the *customer*, that fact should be made clear to the *customer*; and
 - (3) the *firm* should encourage the *customer* to consider whether the *credit*

can be afforded, including in the event the *customer's* circumstances change, for example, through a change in employment or retirement.

[**Note:** paragraph 3.14 of *SCLG*]

15.1.11 R A *firm* must set out the nature and purpose of the fees and charges payable by the *customer*, including any fees or charges payable on the *customer's* default:

- (1) in the *credit agreement*; and
- (2) in any booklet or leaflet relating to the agreement.

[**Note:** paragraph 4.3 of *SCLG*]

15.1.12 R Where rates and charges under a *credit agreement* are variable, a *firm* must:

- (1) before entering into the agreement, explain to the *customer* the consequences of such variations on the amount of periodic instalments payable and on the *total amount payable*;
- (2) only increase rates or charges to recover genuine increases in costs of the *firm* which have an effect on the *credit* provided under the agreement; and
- (3) explain to the *customer* before changing any rate or charge under the agreement.

[**Note:** paragraph 4.4 of *SCLG*]

15.1.13 R Where a *customer* wishes to make repayments ahead of time:

- (1) a *firm's* charges for early repayment must be fair and reasonable and must reflect the *firm's* necessary costs in relation to such repayment;
- (2) the *firm* must fully explain the process and costs involved in early repayment; and
- (3) the *firm* must allow the *customer* to make part early repayment of the capital.

[**Note:** paragraph 4.5 of *SCLG*]

15.1.14 G Where a *firm* considers taking action to repossess a *customer's* home, it should, where permitted, establish contact with the holder of any charges in priority to the *firm's* charge to minimise adverse impacts on the *customer*.

[**Note:** paragraph 6.2 of *SCLG*]

15.1.15 R If a shortfall remains following the sale of a property, the *firm* must notify the *customer* as soon as possible of the amount of the shortfall.

[**Note:** paragraph 6.5 of *SCLG*]

TP 1 Transitional provisions: introduction to TP2

Application		
1.1	R	These transitional provisions apply to:
		(a) a <i>firm</i> which has a <i>Part 4A permission</i> for a <i>credit-related regulated activity</i> ;
		(b) a <i>firm</i> which is treated as having a <i>Part 4A permission</i> or a variation of permission for a <i>credit-related regulated activity</i> by virtue of article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment)(No 2) Order 2013; and
		(b) an <i>incoming firm</i> which carries on a <i>credit-related regulated activity</i> .
Purpose		
1.2	G	The <i>FCA</i> is aware that the introduction of <i>CONC</i> will impose an additional compliance burden on <i>firms</i> , even when there is an underlying continuity of policy. The <i>FCA</i> wishes to lighten that burden in a manner consistent with its regulatory objectives and the principles of good regulation under the <i>Act</i> . The following <i>rules</i> give <i>firms</i> additional time after 1 April 2014 to complete their preparations for the impact of certain provisions in <i>CONC</i> .
Definitions		
1.3	R	In these transitional provisions the following words are to have the meaning given to them below:
		"corresponding rule" means a provision or guidance set out, as they stand on 31 March 2014, in:
		the guidance issued by the Office of Fair Trading entitled "Debt collection: OFT guidance for businesses engaged in the recovery of consumer credit debts" (OFT664rev2);
		the guidance issued by the Office of Fair Trading entitled "Irresponsible lending: OFT guidance for creditors" (OFT1107);
		the guidance issued by the Office of Fair Trading entitled "Debt management (and credit repair services) guidance" (OFT366rev);
		the guidance issued by the Office of Fair Trading entitled "Credit brokers and intermediaries: OFT guidance for brokers, intermediaries and the consumer credit and hire businesses which employ or use their services" (OFT1388);
		the guidance issued by the Office of Fair Trading entitled "Mental capacity: OFT guidance for creditors" (OFT1373);

		the guidance issued by the Office of Fair Trading entitled “Guidance on sections 77, 78 and 79 of the Consumer Credit Act 1974: the duty to give information to debtors and the consequences of non-compliance on the enforceability of the agreement” (OFT1272);
		the guidance issued by the Office of Fair Trading entitled “Second charge lending – OFT guidance for lenders and brokers” (OFT1105);
		Part 4 of the CCA, including as applied by section 151 of the CCA;
		sections 55A, 55B, 74A, 74B, 81, 82A, 115 and 160A of the CCA;
		The Consumer Credit (Conduct of Business) (Credit References) Regulations 1977 (S.I. 1977/330);
		The Consumer Credit (Payments Arising on Death) Regulations 1983 (S.I. 1983/1554);
		The Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983 (S.I. 1983/1565);
		The Consumer Credit (Content of Quotations) and Consumer Credit (Advertisements)(Amendments) Regulations 1999 (S.I. 1999/2725);
		The Electronic Commerce (EC Directive) Regulations 2002 (S.I. 2002/2013);
		The Financial Services (Distance Marketing) Regulations 2004 (S.I. 2004/2095);
		the Consumer Credit (Advertisements) Regulations 2004 (S.I. 2004/1484) and 2010 (S.I. 2010/1970);
		that is substantially similar in purpose and effect to the relevant provision in <i>CONC</i> .
		a “credit firm” means a <i>firm</i> which has or is treated as having a <i>Part 4A permission</i> for a <i>credit-related regulated activity</i> ;
		an “EEA credit firm” means an <i>incoming firm</i> which carries on a <i>credit-related regulated activity</i> ;
		“transitional period” means the period starting on 1 April 2014 and finishing at midnight at the end of 30 September 2014.

TP 2 Transitional provisions in relation to corresponding rules

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
2.1	CONC, to the extent there is a corresponding rule	R	(1)	A <i>credit firm</i> and an <i>EEA firm</i> with respect to carrying on a <i>credit-related regulated activity</i> will not contravene a <i>rule</i> in <i>CONC</i> to the extent that, on or after 1 April 2014, it is able to demonstrate that it has complied with the corresponding rule, with any necessary modification to take account of the coming into force of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 and the Financial Services Act 2012 (Consumer Credit) Order 2013.	The transitional period	1 April 2014
2.2		G	(1)	In order to benefit from the transitional provision, a <i>credit firm</i> or an <i>EEA firm</i> must ensure that the corresponding rule referred to in TP 1.3R with which it complies is substantially similar in purpose and effect to the provision in <i>CONC</i> to which it relates.		
			(2)	For the assistance of <i>firms</i> , <i>CONC</i> includes notes which indicate particular <i>rules</i> or guidance for which there is a corresponding rule. <i>Firms</i> may wish to refer to these notes but in doing so should understand that they are not intended to be exhaustive and are produced merely as		

				<p>a guide.</p> <p><i>Firms</i> are advised that should they wish to take advantage of the transitional provisions set out in this section, the onus is on the <i>firm</i> to be able to demonstrate that in any given case it has in fact complied with the corresponding rules.</p>		
			(3)	<p><i>Firms</i> will have noted that they should treat the corresponding rules as modified to the extent necessary to ensure that the provision can operate effectively notwithstanding the enactment of the Order in TP 1.1R. <i>Firms</i> will need to adopt a common-sense approach in interpreting the corresponding rules and modify them accordingly. For example, references in such rules to the OFT should be read as if they referred to the <i>FCA</i>.</p>		

TP3 Transitional provisions in relation to high cost short term credit

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
3.1	CONC 3.4 (risk warnings)	R	CONC 3.4 (apart from in relation to an <i>electronic communication</i>) does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.2	CONC 6.7.20R (information)	R	CONC 6.7.20R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30	1 April 2014

	sheets)			June 2014	
3.3	<i>CONC</i> 6.7.23R (repeat refinancing)	R	<i>CONC</i> 6.7.23R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.4	<i>CONC</i> 7.6.12R (continuous payment authority)	R	<i>CONC</i> 7.6.12R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.5	<i>CONC</i> 7.6.13R (continuous payment authority)	R	<i>CONC</i> 7.6.13R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014
3.6	<i>CONC</i> 7.6.14R (continuous payment authority)	R	<i>CONC</i> 7.6.14R does not apply until 1 July 2014.	From 1 April 2014 until the end of 30 June 2014	1 April 2014

TP 4 Transitional provisions in relation to operating an electronic system in relation to lending

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
4.1	Adequate explanations requirements	R	<i>CONC</i> 4.3.3G, 4.3.4R and 4.3.5R do not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.2	Creditworthiness requirements	R	<i>CONC</i> 5.5 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.3	Arrears notice for	R	<i>CONC</i> 7.17 does not apply	From 1 April	1 April

	fixed sum credit		until 1 October 2014.	2014 until the end of 30 September 2014	2014
4.4	Arrears notice for running account credit	R	<i>CONC</i> 7.18 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.5	Default sums notice	R	<i>CONC</i> 7.19 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014
4.6	Right to withdraw from P2P agreement	R	<i>CONC</i> 11.2 does not apply until 1 October 2014.	From 1 April 2014 until the end of 30 September 2014	1 April 2014

TP 5 Transitional provisions for prudential provisions in relation to debt management firms

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
5.1	<i>CONC</i> 10.3.3R	R	A <i>firm</i> can calculate its prudential resources without deducting items 2 and 3 in <i>CONC</i> 10.3.3R	From 1 April 2014 to 31 March 2017	1 April 2014
5.2	<i>CONC</i> 10.3.5R	R	b = items 1, 4 and 5 in the Table of items which must be deducted from a <i>firm's</i> prudential resources (see <i>CONC</i> 10.3.3 R)	From 1 April 2014 to 31 March 2017	1 April 2014
5.3	<i>CONC</i> 10.3.6G	G	The <i>guidance</i> at <i>CONC</i> 10.3.6G should be read in the light of <i>TP</i> 5. 2	From 1 April 2014 to 31 March 2017	1 April 2014

TP6 Transitional provisions for financial promotions and communications in relation to catalogues etc.

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
6.1	CONC 3	R	A <i>firm</i> will not contravene a rule in CONC 3 to the extent that a <i>financial promotion</i> or communication referred to in 6.2 would comply, as the case may be, with the Consumer Credit (Advertisements) Regulations 2010 or the Consumer Credit (Advertisements) Regulations 2004 (assuming they had not been repealed by Article 21 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013).	From 1 April 2014 to 31 March 2015	1 April 2014
6.2		R	A <i>financial promotion</i> or a communication first communicated to the public in a catalogue, diary or work of reference comprising at least fifty printed pages copies of which are first communicated before 1 October 2014 and which in a reasonably prominent position either contains the date of its first publication or specifies a period being a calendar or seasonal period throughout which it is intended to have effect.	From 1 April 2014 to 31 March 2015	1 April 2014

Sch 1 Record keeping requirements

1.1	G	The aim of the <i>guidance</i> in the following table is to give the reader a quick overall view of the relevant record keeping requirements in <i>CONC</i> .
1.2	G	It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
6.6.3R	Actions concerning articles taken in <i>pawn</i> .	Specified details concerning taking articles in <i>pawn</i> , redemption and sale of articles in <i>pawn</i> .	Date of event referred to in section.	At least the longer of 5 years from the date on which an article is taken in <i>pawn</i> or 3 years from date of sale under section 121(1) of the <i>CCA</i> or the redemption of the article as the case may be.
7.13.2R	An <i>individual</i> who is, or is treated as, a <i>borrower</i> under a <i>credit agreement</i> or <i>consumer hire agreement</i> .	Accurate and adequate data (including in respect of debt and repayment history) in relation to <i>individuals</i> owing, or treated as owing, money under <i>credit agreements</i> or <i>consumer hire agreements</i> .	When a <i>firm</i> is notified in relation to an <i>individual</i> whom it is to pursue for recovery of a debt.	Not specified.
7.13.7R	An <i>individual</i> not being the <i>borrower</i> under a <i>credit agreement</i> or <i>consumer hire agreement</i> .	Record that the <i>individual</i> is not the <i>borrower</i> and should not be pursued for debt.	Date on which the <i>firm</i> is aware of true state of affairs.	Not specified.
8.8.1R(9)	Record of <i>debt management plans</i> entered into with <i>customers</i> .	An adequate record.	When the <i>firm</i> enters into <i>debt management plan</i> .	Until the contract between the <i>customer</i> and the <i>firm</i> is completed or terminated.

11.1.9R	Exercise of right to cancel under <i>CONC</i> 11.1.1R.	Adequate record of use of right to cancel by <i>consumer</i> .	Date of exercise.	3 years.
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Sch 2 Notification and reporting requirements (if any)

	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
G	<i>CONC</i> 10.2.14R	Any change in a <i>firm's</i> prudential resources requirement	The changed prudential resources requirement	The change in the <i>firm's</i> prudential resources requirement	Within 14 <i>days</i> of the trigger event

Sch 3 Fees and other required payment

Not used

Sch 4

Not used

Sch 5 Rights of action for damages

Sch 5.1	G	The table below sets out the <i>rules</i> in <i>CONC</i> contravention of which by an <i>authorised person</i> may be actionable under section 138D of the <i>Act</i> (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.
Sch 5.2	G	If a "Yes" appears in the column headed "For private person?", the <i>rule</i> may be actionable by a " <i>private person</i> " under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the <i>FCA</i> has removed the right of action under section 138D(2) of the <i>Act</i> . If so, a reference to the <i>rule</i> in which it is removed is also given.
Sch 5.3	G	The column headed "For other person?" indicates whether the <i>rule</i> may be actionable by a <i>person</i> other than a <i>private person</i> (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of <i>person</i> by whom the rule may be actionable is given.

			Right of action under section 138D			
Chapter/ Appendix	Section/ Annex	Paragraph	For private person?	Removed?	For other person?	
The clear, fair and not misleading <i>rule</i> in <i>CONC</i> 3.3.1R			Yes (Notes 2 & 3)	In part (Note 1)	No	
The prudential <i>rules</i> for <i>debt management firms</i> and <i>not-for-profit debt advice bodies</i> in <i>CONC</i> 10			No	Yes, <i>CONC</i> 10.1.6R	No	
All other <i>rules</i> in <i>CONC</i>			Yes (Notes 2 & 3)	No	No	
Notes						
(1)	<i>CONC</i> 3.3.1R(2) provides that if, in relation to a particular communication or <i>financial promotion</i> , a <i>firm</i> takes reasonable steps to ensure it complies with the clear, fair and not misleading <i>rule</i> , a contravention of that <i>rule</i> does not give rise to a right of action under section 138D of the <i>Act</i> .					
(2)	The definition of private person includes a “relevant recipient of credit” which is defined on article 60L of the <i>Regulated Activities Order</i> as “a partnership consisting of two or three persons not all of whom are bodies corporate, or an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership”.					
(3)	The definition of private person includes a person who is, by virtue of article 36J of that Order, to be regarded as a person who uses, may use, has or may have used or has or may have contemplated using, services provided by authorised persons in carrying on a <i>regulated activity</i> of the kind specified by article 36H of that Order or article 64 of that Order so far as relevant to that activity.					

Sch 6 Rules that can be waived

6.1	As a result of section 138A of the <i>Act</i> (Modification or waiver of rules) the <i>FCA</i> has power to waive all its <i>rules</i> , other than <i>rules</i> made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the <i>Act</i> . However, if the <i>rules</i> incorporate requirements laid down in European directives, it will not be possible for the <i>FCA</i> to grant a waiver that would be incompatible with the <i>UK's</i> responsibilities under those directives.
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Appendix 2

Made rules (legal instrument): Consequential and Supplementary Amendments

**CONSUMER CREDIT (CONSEQUENTIAL AND SUPPLEMENTARY
AMENDMENTS) INSTRUMENT 2014**

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes the rules and guidance and varies the standard terms in Annex K to this instrument for Voluntary Jurisdiction participants in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 226A (Consumer credit jurisdiction);
 - (2) section 227 (Voluntary Jurisdiction);
 - (3) paragraph 8 (Information, advice and guidance) of Schedule 17 (The Ombudsman Scheme);
 - (4) paragraph 14 (The scheme operator’s rules) of Schedule 17; and
 - (5) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making of these rules and the variation of the standard terms by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (c) section 137R (Financial promotion rules);
 - (d) section 137T (General supplementary powers);
 - (e) section 138D (Actions for damages);
 - (f) section 139A (Power of the FCA to give guidance);
 - (g) section 226 (Compulsory jurisdiction);
 - (h) section 395 (The Authority’s procedures) as applied by article 3(11) The Financial Services Act 2012 (Consumer Credit) Order 2013; and
 - (i) paragraph 13(4) (FCA’s procedural rules) of schedule 17 (The Ombudsman Scheme) to the Act;
 - (2) article 4 (Statements of policy) of the Financial Services Act 2012 (Consumer Credit) Order 2013;
 - (3) article 60E(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and
 - (4) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.

- D. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The FCA approves and consents to the Financial Ombudsman Service Limited making the rules and varying the standard terms in Annex K to this instrument pursuant to the following powers and related provisions in the Act:
- (1) section 226A (Consumer credit jurisdiction);
 - (2) section 227 (Voluntary jurisdiction);
 - (3) paragraph 14 (The scheme operator's rules) of Schedule 17; and
 - (4) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

Commencement

- F. This instrument comes into force on 1 April 2014.

Amendments to the FCA Handbook

- G. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Threshold Conditions (COND)	Annex D
General Provisions (GEN)	Annex E
Conduct of Business sourcebook (COBS)	Annex F
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex G
Client Assets sourcebook (CASS)	Annex H
Supervision manual (SUP)	Annex I
Decision Procedure and Penalties manual (DEPP)	Annex J
Dispute Resolution: Complaints sourcebook (DISP)	Annex K
Credit Unions sourcebook (CREDS)	Annex L
Consumer Credit sourcebook (CONC)	Annex M

Amendments to material outside the Handbook

- H. The Building Societies Regulatory Guide (BSOG) is amended in accordance with Annex N to this instrument.
- I. The Enforcement Guide (EG) is amended in accordance with Annex O to this instrument.

- J. The Financial Crime: a guide for firms (FC) is amended in accordance with Annex P to this instrument.
- K. The Perimeter Guidance manual (PERG) is amended in accordance with Annex Q to this instrument.
- L. The Unfair Contract Terms Regulatory Guide (UNFCOG) is amended in accordance with Annex R to this instrument.

Citation

- M. This instrument may be cited as the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014.

By order of the Board of the Financial Ombudsman Service Limited
19 February 2014

By order of the Board of the Financial Conduct Authority
27 February 2014

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>acknowledgement letter fixed text</i>	(in CASS 11) the text in the template acknowledgement letters in CASS 11 Annex 1R that is not in square brackets.
<i>acknowledgement letter variable text</i>	(in CASS 11) the text in the template acknowledgment letters in CASS 11 Annex 1R that is in square brackets.
<i>advance payment</i>	includes any deposit but does not include a <i>repayment of credit</i> or any insurance premium or any amount entering in the <i>total charge for credit</i> .
<i>authorised business overdraft agreement</i>	a <i>borrower-lender agreement</i> which provides authorisation in advance for the <i>borrower</i> to overdraw on a current account, where the agreement is entered into by the <i>borrower</i> wholly or predominantly for the purposes of the <i>borrower's</i> business.
<i>authorised non-business overdraft agreement</i>	a <i>borrower-lender agreement</i> which provides authorisation in advance for the <i>borrower</i> to overdraw on a current account, where: (a) the <i>credit</i> must be repaid on demand or within three months; (b) the agreement is not entered into by the <i>borrower</i> wholly or predominantly for the purposes of the <i>borrower's</i> business.
<i>bill of sale loan agreement</i>	a <i>regulated credit agreement</i> secured by a bill of sale under the Bills of Sale Act 1878, the Bills of Sale Act (1878) Amendment Act 1882 or the Bills of Sale Ireland Act (1878).
<i>canvassing off trade premises</i>	(a) an activity by an individual (“the canvasser”) of soliciting the entry of another <i>individual</i> (“B”) into an agreement by making oral representations to B during a visit by the canvasser to any place (other than a place in (b)) where B is, being a visit made by the canvasser for the purpose of making such oral representations. (b) a place where a business is carried on (whether on a permanent or temporary basis) by:

- (i) the *lender* or *owner*; or
- (ii) a *supplier*; or
- (iii) the canvasser; or
- (iv) a *person* who employs the canvasser or has appointed the canvasser as an agent; or
- (v) B;

is excluded from (a).

cash price (in relation to any *goods*, services, *land* or other things) the price or charge at which the *goods*, services, *land* or any other things may be purchased by, or supplied to, the *borrower* for *cash*, account being taken of any discount generally available from the *dealer* or *supplier* in question.

CASS debt management firm

a *firm* which:

- (a) carries on the activities of *debt counselling* or *debt adjusting*, alone or together, with a view to an *individual* entering into a particular *debt solution*; or
- (b) carries on the activity of *debt counselling* where an *associate* carries on *debt adjusting* with the aim in (a) in view; or
- (c) carries on *debt adjusting* where an *associate* carries on *debt counselling* with the aim in (a) in view; or
- (d) is a *not-for-profit debt advice body*.

CASS 11 resolution pack

those documents and records specified in CASS 11.12.4R.

CASS large debt management firm

a *CASS debt management firm* falling within the classification of *CASS large debt management firm* in CASS 11.2.3R.

CASS large debt management firm external client money reconciliation

the external client money reconciliation that *CASS large debt management firms* are obliged to undertake pursuant to CASS 11.11.25R to CASS 11.11.26R.

CASS large debt management firm internal client money reconciliation

the internal client money reconciliation that *CASS large debt management firms* are obliged to undertake pursuant to CASS 11.11.13R to CASS 11.11.21R.

<i>CASS small debt management firm</i>	a <i>CASS debt management firm</i> falling within the classification of <i>CASS small debt management firm</i> in CASS 11.2.3R.
<i>CBG</i>	the Office of Fair Trading's Credit Brokers and Intermediaries Guidance.
<i>CCA Order</i>	the Financial Services Act 2012 (Consumer Credit) Order 2013.
<i>CCA Requirement</i>	a requirement imposed by or under Parts 2, 4, 5 and 6 to 12 of the CCA.
<i>CCAR 2004</i>	Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484.
<i>CCAR 2010</i>	Consumer Credit (Advertisements) Regulations 2010, SI 2010/1970.
<i>client bank account acknowledgement letter</i>	(in CASS 11) a letter in the form of the template in CASS 11 Annex 1R.
<i>community benefit society</i>	a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 which fulfils the condition in section 1(2)(b) of that Act or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act (Northern Ireland) 1969 which fulfils the condition in section 1(2) of that Act.
<i>community finance organisation</i>	a <i>community benefit society</i> , a <i>registered charity</i> or a community interest company limited by guarantee (within the meaning of Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004).
<i>consumer hiring</i>	in accordance with article 60N of the <i>Regulated Activities Order</i> , entering into a <i>regulated consumer hire agreement</i> as <i>owner</i> or exercising, or having the right to exercise, the <i>owner's</i> rights and duties under a <i>regulated consumer hire agreement</i> .
<i>consumer credit lending</i>	in accordance with article 60B of the <i>Regulated Activities Order</i> , entering into a <i>regulated credit agreement</i> as <i>lender</i> or exercising, or having the right to exercise, the <i>lender's</i> rights and duties under a <i>regulated credit agreement</i> .
<i>continuous payment authority</i>	consent given by a <i>customer</i> for a <i>firm</i> to make one or more requests to a <i>payment service provider</i> for one or more payments from the <i>customer's payment account</i> , but excluding: <ul style="list-style-type: none"> (a) a direct debit to which the Direct Debit guarantee applies; and (b) separate consent given by a <i>customer</i> to a <i>firm</i>, following the making of the <i>credit agreement</i>, for the <i>firm</i> to make a single request to a <i>payment service provider</i> for one payment of a specified amount from the <i>customer's payment account</i> on the

same day as the consent is given or on a specified day.

<i>cost of credit</i>	any costs, including interest, commission, taxes and any other kind of fees which are required to be paid by or on behalf of the <i>borrower</i> or a relative of the <i>borrower</i> in connection with the <i>credit agreement</i> , whether payable to the <i>lender</i> or to any other <i>person</i> , and which are known to the <i>lender</i> , except for notarial costs.
<i>credit card cheque</i>	a cheque (whether or not drawn on a banker) which, whenever used, will result in the provision of <i>credit</i> under a <i>credit-token agreement</i> , which does not include a cheque to be used only in connection with a current account.
<i>credit-sale agreement</i>	an agreement for the sale of goods under which the purchase price, or part of it, is payable by instalments, but which is not a <i>conditional sale agreement</i> (see section 189 of the <i>CCA</i>).
<i>credit token</i>	<p>a credit token is a card, check, voucher, coupon, stamp, form, booklet or other document or thing <i>given</i> to an <i>individual</i> by a <i>person</i> carrying on a <i>credit-related regulated activity</i> (“the provider”), who undertakes that:</p> <ul style="list-style-type: none">(a) on production of it (whether or not some other action is also required) the provider will supply <i>cash</i>, <i>goods</i> or services (or any of them) on <i>credit</i>; or(b) where, on the production of it to a third party (whether or not any other action is also required), the third party supplies <i>cash</i>, <i>goods</i> and services (or any of them), the provider will pay the third party for them (whether or not deducting any discount or commission), in return for <i>payment</i> to the provider by the <i>individual</i> and the provider shall, without prejudice to the definition of <i>credit</i>, be taken to provide <i>credit</i> drawn on whenever a third party supplies the <i>individual</i> with <i>cash</i>, <i>goods</i> or services; and <p>the use of an object to operate a machine provided by the <i>person</i> giving the object or a third party shall be treated as the production of the object to that <i>person</i> or third party.</p>
<i>credit-token agreement</i>	a <i>regulated credit agreement</i> for the provision of <i>credit</i> in connection with the use of a <i>credit token</i> .
<i>credit-worthiness assessment</i>	the assessment required by <i>CONC</i> 5.2.1R.
<i>DCG</i>	the Office of Fair Trading’s Debt Collection Guidance.
<i>dealer</i>	in relation to a <i>hire-purchase agreement</i> , <i>credit-sale agreement</i> or <i>conditional sale agreement</i> under which this <i>person</i> is not the <i>lender</i> , a <i>person</i> who sells or proposes to sell <i>goods</i> , <i>land</i> or other things to the <i>lender</i> before they form the subject matter of any such agreements

and, in relation to any other agreements, means a *supplier* or the *supplier's* agent.

<i>debt adjuster</i>	a <i>person</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>debt adjusting</i> and who negotiates with a <i>lender</i> on behalf of a <i>customer</i> the terms of discharge of a debt due under a <i>credit agreement</i> or a <i>consumer hire agreement</i> , or takes over the <i>customer's</i> obligations to discharge such debts in return for payments by the <i>customer</i> , or carries on any similar activity concerned with the liquidation of such a debt.
<i>debt collector</i>	a <i>person</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>debt collecting</i> and who takes steps to procure payment of debts due under <i>credit agreements</i> or <i>consumer hire agreements</i> .
<i>debt counsellor</i>	a <i>person</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>debt counselling</i> and who gives advice to <i>borrowers</i> or <i>hirers</i> about the liquidation of debts under <i>credit agreements</i> or <i>consumer hire agreements</i> .
<i>debt management activity</i>	the activities of <i>debt counselling</i> or <i>debt adjusting</i> , alone or together, carried on with a view to an <i>individual</i> entering into a particular <i>debt solution</i> or in relation to any such <i>debt solution</i> , and activities connected with those activities.
<i>debt management client money chapter</i>	CASS 11.
<i>debt management client money distribution rules</i>	the rules and guidance in CASS 11.13.
<i>debt management client money rules</i>	the rules and guidance in CASS 11.1 to CASS 11.12.
<i>debt management plan</i>	a non-statutory agreement between a <i>customer</i> and one or more of the <i>customer's lenders</i> the aim of which is to discharge or liquidate the <i>customer's</i> debts, by making regular payments to a third party which administers the plan and distributes the money to the <i>lenders</i> .
<i>disclosure regulations</i>	as the case may be, the Consumer Credit (Disclosure of Information) Regulations 2010, SI 2010/1013 or the Consumer Credit (Disclosure of Information) Regulations 2004, SI 2004/1481.
<i>DMG</i>	the Office of Fair Trading's Debt Management (and credit repair services Guidance).
<i>green deal plan</i>	an arrangement by the occupier or owner of a property for a person to make energy efficient improvements to the property wholly or partly paid for in instalments, as defined in section 1 of the Energy Act

2011.

high-cost short-term credit

a regulated credit agreement:

- (a) which is a *borrower-lender agreement* or a *P2P agreement*;
- (b) in relation to which the *APR* is equal to or exceeds 100%;
- (c) either:
 - (i) in relation to which a *financial promotion* indicates (by express words or otherwise) that the *credit* is to be provided for any period up to a maximum of 12 months or otherwise indicates (by express words or otherwise) that the *credit* is to be provided for a short term; or
 - (ii) under which the *credit* is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the *credit* is advanced;
- (d) which is not secured by a mortgage, charge or pledge; and
- (e) which is not:
 - (i) a *credit agreement* in relation to which the *lender* is a *community finance organisation*; or
 - (ii) a *home credit loan agreement*, a *bill of sale loan agreement* or a *borrower-lender agreement* enabling a *borrower* to overdraw on a current account or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.

home credit loan agreement

a regulated credit agreement which is a *borrower-lender agreement* and which either:

- (a) provides that all or most of the sums payable by the *customer* are to be collected by, or on behalf of, the *lender* at the *customer's* home or at the home of a natural person who makes payment to the *lender* on the *customer's* behalf (or, in either case, to be so collected if the *customer* so wishes); or
- (b) at the time the agreement is entered into, the *customer* could reasonably expect, from representations made by, or on behalf of, the *lender* at or before that time, that all or most of the sums payable would be so collected (or, in either case, would be collected as specified in (a) if the *customer* so wished).

ILG

the Office of Fair Trading's Irresponsible Lending Guidance.

<i>JGPPI</i>	the FSA/OFT Joint Guidance on Payment Protection Products.
<i>lead generator</i>	a <i>person</i> that acquires the personal contact details of <i>customers</i> and passes the <i>customers</i> ' details to a <i>firm</i> in return for a fee.
<i>MCG</i>	the Office of Fair Trading's Mental Capacity Guidance.
<i>non-commercial agreement</i>	a <i>credit agreement</i> or a <i>consumer hire agreement</i> not made by the <i>lender</i> in the course of a business carried on by the <i>lender</i> or <i>owner</i> .
<i>open-end agreement</i>	a <i>credit agreement</i> with no fixed duration.
<i>operator of an electronic system in relation to lending</i>	a <i>person</i> who has, or ought to have, <i>permission</i> for <i>operating an electronic system in relation to lending</i> .
<i>pawn</i>	any article subject to a <i>pledge</i> .
<i>pawnee</i>	a <i>person</i> who takes any article in <i>pawn</i> and includes any <i>person</i> to whom the rights and duties of the original pawnee have passed by assignment or operation of law.
<i>pawnor</i>	includes any <i>person</i> to whom the rights and duties of the original pawnor have passed by assignment or operation of law.
<i>pawn-receipt</i>	has the meaning given by section 114 of the <i>CCA</i> .
<i>pledge</i>	a <i>pawnee</i> 's rights over an article taken in <i>pawn</i> .
<i>provider of credit information services</i>	a <i>person providing credit information services</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>providing credit information services</i> .
<i>provider of credit references</i>	a <i>person providing credit references</i> who has, or ought to have, a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> of <i>providing credit references</i> .
<i>registered charity</i>	a charity: <ul style="list-style-type: none">(a) registered on the Charity Commission's Register of Charities;(b) registered on the Scottish Charity Register;(c) registered on the Charity Commission of Northern Ireland's Register of Charities; or(d) that is or will be required to register on the register in (c) and which is recognised as a charity for tax purposes by Her Majesty's Revenue and Customs.

<i>Regulated Activities Amendment Order</i>	the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 (SI 2013/1881).
<i>regulated agreement</i>	any <i>credit agreement</i> which is not an exempt agreement (see articles 60C to 60H of the <i>Regulated Activities Order</i>) or any <i>consumer hire agreement</i> which is not an exempt agreement (see articles 60O to 60Q of the <i>Regulated Activities Order</i>).
<i>relevant credit activity</i>	an activity of a kind specified as a <i>relevant credit activity</i> in paragraph 2G of Schedule 6 to the <i>Act</i> .
<i>relevant credit agreement</i>	a <i>credit agreement</i> (within the meaning given by article 60B of the <i>Regulated Activities Order</i>) other than a <i>regulated mortgage contract</i> or a <i>regulated home purchase plan</i> (within the meaning of that Order) (see paragraph 28 of Schedule 1 to the <i>Financial Promotion Order</i>).
<i>relevant credit-related complaint</i>	a <i>relevant existing credit-related complaint</i> or a <i>relevant new credit-related complaint</i> .
<i>relevant debts under management</i>	in relation to a <i>firm</i> , a debt due under a <i>credit agreement</i> or a <i>consumer hire agreement</i> in relation to which the <i>firm</i> is carrying on <i>debt adjusting</i> or an activity connected to that activity.
<i>relevant existing credit-related complaint</i>	a complaint made under the ombudsman scheme before 1 April 2014 which was being dealt with under the <i>Consumer Credit Jurisdiction</i> .
<i>relevant new credit-related complaint</i>	(in accordance with the <i>Regulated Activities Amendment Order</i>) a complaint made under the ombudsman scheme on or after 1 April 2014: (a) which relates to an act or omission which took place before 1 April 2014; (b) which could have been dealt with under the <i>Consumer Credit Jurisdiction</i> (disregarding the effect of section 226A(2)(a) and (b) of the <i>Act</i>) but for the repeal of section 226A of the <i>Act</i> ; and (c) in relation to which the complainant is eligible and wishes for the complaint to be dealt with under the <i>Financial Ombudsman Service</i> .
<i>relevant provisions</i>	in accordance with article 36A of the <i>Regulated Activities Order</i> , articles 60C (exempt agreements: exemptions relating to the nature of the agreement), 60D (exempt agreements: exemption relating to the purchase of land for non-residential purposes), 60E (exempt agreements: exemptions relating to the nature of the lender), 60G (exempt agreements: exemptions relating to the total charge for

credit) and 60H (exempt agreements: exemptions relating to the nature of the borrower) of that Order.

<i>repayment</i>	includes repayment of <i>credit</i> with or without any other amount.
<i>representative APR</i>	an <i>APR</i> at or below which the <i>firm communicating or approving the financial promotion</i> reasonably expects, at the date on which the promotion is <i>communicated or approved</i> , that <i>credit</i> would be provided under at least 51% of the <i>credit agreements</i> which will be entered into as a result of the promotion.
<i>SCLG</i>	the Office of Fair Trading's Second Charge Lending Guidance.
<i>small borrower-lender-supplier agreement</i>	a <i>borrower-lender-supplier agreement</i> which is a small agreement within the meaning of section 17 of the <i>CCA</i> .
<i>sustainable</i>	(in <i>CONC</i>) has the meaning given in <i>CONC</i> 5.3.1G.
<i>typical APR</i>	an <i>APR</i> at or below which the <i>firm communicating or approving the financial promotion</i> reasonably expects, at the date on which the <i>financial promotion</i> is <i>communicated or approved</i> , that <i>credit</i> would be provided under at least 66% of the agreements which will be entered into as a result of the <i>financial promotion</i> .
<i>unsustainable</i>	(in <i>CONC</i>) has the meaning given in <i>CONC</i> 5.3.1G.

Amend the following definitions as shown.

<i>ancillary service</i>	(1) <u>(except in <i>CONC</i>) ...</u> [Note: article 4(1)(3) of <i>MiFID</i>]
	(2) <u>(in <i>CONC</i>) a service that relates to <i>entering into a regulated credit agreement as lender</i> and includes, in particular, an insurance or payment protection policy.</u>
<i>appointed representative</i>	(1) <u>(in relation to cases apart from in (2) (in accordance with section 39 of the <i>Act</i> (other than an <i>authorised person</i>) a <i>person</i> who:</u> ...
	(2) <u>(in relation to a <i>firm with a permission only to carry on one or more regulated activities</i> prescribed for the purposes of section 39(1E)(a) of the <i>Act</i>) in accordance with section 39 of the <i>Act</i>, a person (“A”) who:</u> (a) <u>is a party to a contract with another <i>authorised person</i> (A’s <i>principal</i>) which:</u>

(i) permits or requires A to carry on business of a description prescribed in the *Appointed Representatives Regulations* (“the relevant business”); and

(ii) complies with such requirements as are prescribed in those Regulations; and

(b) is someone for whose activities in carrying on the whole or part of the relevant business A’s *principal* has accepted responsibility in writing;

and, therefore, to whom sections 20(1) and (1A) and 23(1A) of the Act do not apply in relation to the carrying on by A of a regulated activity which is not one to which A’s *permission* relates, and is comprised in the carrying on of the business for which A’s *principal* has accepted responsibility.

APR

(1) (except in *CONC*) annual percentage rate.

(2) (in *CONC* for a credit agreement secured on land) the annual percentage rate of charge for credit determined in accordance with the rules in *CONC* App 1.1 and *CONC* 3.6.9R.

(3) (in *CONC* for all other credit agreements) the annual percentage rate of charge for credit determined in accordance with the rules in *CONC* App 1.2 and *CONC* 3.5.13R.

borrower

...

(3) (in relation to debt collecting and debt administration (and so far as relevant to those activities in relation to article 64 (agreeing to carry on a regulated activity) of the *Regulated Activities Order*)) “borrower” includes, in addition to the persons in (1), any person providing a guarantee or an indemnity under the credit agreement and a person to whom the rights and duties of a person providing a guarantee or an indemnity have passed by assignment or operation of law.

client

...

(B) in the *FCA Handbook*:

...

(3) (in *PROF*) (as defined in section 328(8) of the Act (Directions in relation to the general prohibition)) (in relation to members of a profession providing financial services under Part XX of the Act (Provision of Financial Services by Members of the Professions)):

...

- (c) a *person* who has rights or interests which may be adversely affected by the use of any such services by *persons* acting on his behalf or in a fiduciary capacity in relation to him; and

- (d) in relation to a *person* (“A”) carrying on a *regulated activity* of the kind specified by article 39F (Debt-collecting) or 39G (Debt administration) of the *Regulated Activities Order*, includes:
 - (i) the *borrower* under the *credit agreement* or the *hirer* under the *consumer hire agreement*;
 - (ii) someone who has been the *borrower* or *hirer* under the agreement;
 - (iii) a *person* who is treated by A as a *person* falling within (i) or (ii);
 - (iv) any *person* providing a guarantee or indemnity under the agreement; and
 - (v) a *person* to whom the rights and duties of a *person* falling within (iv) have passed by assignment or operation of law; and

- (e) in relation to a *person* (“A”) carrying on a *regulated activity* of the kind specified by article 60B (regulated credit agreements) or article 60N (regulated consumer hire agreements) of the *Regulated Activities Order*, includes a *person* who is treated by A as a *person* who is or has been:
 - (i) the *borrower* under a *regulated credit agreement* or the *hirer* under a *regulated consumer hire agreement*;
 - (ii) a *person* providing a guarantee or indemnity under the agreement; or
 - (iii) a *person* to whom the rights and duties of a *person* within (ii) have passed by assignment or operation of law; and

- (f) includes an *individual* who is, may be, has been or may have been the subject of the information referred to in article 89A (Providing credit information services) of the *Regulated Activities Order*; and

		(g)	<u>includes an <i>individual</i> who is, may be, has been or may have been the subject of information furnished in the course of a <i>person</i> carrying on an activity of the kind specified by article 89B (Providing credit references) of the <i>Regulated Activities Order</i>.</u>
	...		
<i>client bank account</i>	...		
		(3)	<u>(in CASS 11):</u>
		(a)	<u>an account at an <i>approved bank</i> which:</u>
		(i)	<u>holds the <i>money</i> of one or more <i>clients</i>;</u>
		(ii)	<u>is held in the name of the <i>firm</i> to which CASS 11.9 (segregation and the operation of client money accounts) applies;</u>
		(iii)	<u>includes in its title the word “client” (or, if the system constraints of the <i>approved bank</i> or the <i>firm</i> that holds the account (or both) make this impracticable, an appropriate abbreviation of “client” that has the same meaning); and</u>
		(iv)	<u>is a current or a deposit account.</u>
<i>client money</i>	...		
		(2B)	<u>(in CASS 11 and CONC 10) <i>money</i> which a <i>CASS debt management firm</i> receives or holds on behalf of a <i>client</i> in the course of or in connection with <i>debt management activity</i>.</u>
<i>complaint</i>	...		
		(4)	(in <i>DISP</i>) reference to a <i>complaint</i> includes:
			...
		(b)	under the <i>Compulsory Jurisdiction</i> , all or part of a <u><i>relevant complaint</i> or a <i>relevant credit-related complaint</i>.</u>
<i>connected contract</i>	...		
		(B)	in the <i>FCA Handbook</i> :
			a <i>non-investment insurance contract</i> which:
			...

In this definition:

- (h) the transfer of possession of an aircraft, vehicle or vessel under an agreement for hire which is not:
 - (i) a ~~hire-purchase agreement within the meaning of section 189(1) of the Consumer Credit Act 1974~~ hire-purchase agreement; or

...

...

Consumer Credit Jurisdiction the jurisdiction of the *Financial Ombudsman Service* ~~which resulting~~ resulted from section 226A (repealed) of the *Act* ~~which applies to~~ licensees.

controlled activity ...

(in accordance with section 21(9) of the *Act* (The classes of activity and investment)) any of the following activities specified in Part 1 of Schedule 1 to the Financial Promotions Order (Controlled Activities):

...

(fab) credit broking (paragraph 4B);

(fac) operating an electronic system in relation to lending (paragraph 4C);

...

(ga) debt adjusting (paragraph 5A);

(gb) debt-counselling (paragraph 5B);

...

(na) providing relevant consumer credit (paragraph 10BA);

(nb) providing consumer hire (paragraph 10BB);

...

controlled investment (in accordance with section 21(10) of the *Act* (Restrictions on financial promotion) and article 4 of the *Financial Promotion Order* (Definitions of controlled activities and controlled investments)) an *investment* specified in Part II of Schedule 1 to the *Financial Promotion Order* (Controlled investments) (having regard to the effect of paragraph 4C (10) of that Schedule).

credit (1) (except in relation to a *class of contract of insurance* and a

credit-related regulated activity) any kind of loan, deferment of repayment of any loan or of interest on any loan, guarantee or indemnity, and any other kind of accommodation or facility in the nature of credit.

(2) ...

(3) (in relation to a *credit-related regulated activity*) includes a cash loan and any other form of financial accommodation, but an item entering into the *total charge for credit* is not treated as credit even though time is allowed for its payment.

customer ...

(5) (in relation to a *credit-related regulated activity*) an *individual* who enters, may enter or has entered into a *credit agreement* or a *consumer hire agreement*; and:

(-a) (in relation to *consumer credit lending*) includes an *individual* who the *firm* treats as a *person* who is, or has been, the *borrower* under a *regulated credit agreement*;

(-aa) (in relation to *consumer hiring*) includes an *individual* who the *firm* treats as a *person* who is, or has been, the *hirer* under a *regulated consumer hire agreement*;

...

financial promotion rules ...

(5) (in relation to *CONC*) any or all of the *rules* in *CONC* 3, that impose requirements in relation to a *financial promotion* but only to the extent that they apply to a *financial promotion*.

firm ...

(7) (in *DISP* 2 and 3) includes, in accordance with the transitional provisions in article 11 of the *Regulated Activities Amendment Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant existing credit-related complaints* and *relevant new credit-related complaints*.

legal or equitable mortgage in accordance with article 60L of the *Regulated Activities Order*, includes a *legal or equitable* charge and, in Scotland, a heritable security.

limited a *Part 4A permission* for only a relevant credit activity as defined in paragraph 2G of Schedule 6 to the *Act* (guidance on which is given in

<i>permission</i>	<u>COND 1.1A.5AG).</u>
<i>owner</i>	<p>...</p> <p>(2) (in <i>CONC</i> relation to a <i>credit-related regulated activity</i>), as defined in article 60N(3) of the <i>Regulated Activities Order</i>:</p> <p>...</p>
<i>primary pooling event</i>	<p>...</p> <p>(4) <u>(in CASS 11) an event that occurs in the circumstances described in CASS 11.13.3R.</u></p>
<i>principal</i>	<p>(1) ...</p> <p>(b) (if the <i>person</i> is an <i>appointed representative</i> or, where applicable, a <i>tied agent</i>) the <i>authorised person</i> who is party to a contract with the <i>appointed representative</i>, or who is responsible for the acts of the <i>tied agent</i>, resulting in him being exempt, <u>or in him carrying on a regulated activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply</u>, under section 39 of the <i>Act</i> (Exemption of appointed representatives).</p>
<i>private person</i>	<p>...</p> <p>(a) ...</p> <p>(ii) any activity which would be a <i>regulated activity</i> apart from any exclusion made by article 72 of the <i>Regulated Activities Order</i> (Overseas persons); and</p> <p>...</p> <p>(c) <u>a relevant recipient of <i>credit</i> (within the meaning of article 60L of the <i>Regulated Activities Order</i>) who is not an individual and who has suffered the loss in question in connection with an activity of the kind specified by article 36A, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of that Order or article 64 of that Order, so far as relevant to any of those activities; and</u></p> <p>(d) <u>a person who is, by virtue of article 36J of the <i>Regulated Activities Order</i>, to be regarded as a person who uses, may use, has or may have used or has or may have contemplated using, services provided by <i>authorised persons</i> in carrying on a <i>regulated activity</i> of the kind specified by article 36H of that Order or article 64 of that Order so far as relevant to that</u></p>

activity;

...

refinance

see the definition of *finance* (except in relation to *CONC* 6.7.18R to *CONC* 6.7.23R and *CONC* 7.6.12R).

*regulated
consumer hire
agreement*

(1) ~~in accordance with section 15 of the Consumer Credit Act 1974 (as amended) an agreement made by a person with an individual "the hirer" for the bailment or (in Scotland) the hiring of goods to the hirer, being an agreement which~~

(a) ~~is not a hire purchase agreement, and~~

(b) ~~is capable of subsisting for more than three months, and~~

(c) ~~is not an exempt agreement;~~

~~and expressions used in that Act have the same meaning in this definition.~~

(2) ~~(in *CONC*)~~ in accordance with article 60N of the *Regulated Activities Order*, a *consumer hire agreement* which is not an exempt agreement under articles 60O to 60Q of the *Regulated Activities Order*.

regulatory system

...

(B) in the *FCA Handbook*:

the arrangements for regulating a *firm* or other *person* in or under the *Act*, including the *threshold conditions*, the *Principles* and other *rules*, the *Statements of Principle*, codes and *guidance*, or in or under the *CCA*, and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the *MiFID implementing Directive*, the *MiFID Regulation* and the *EU CRR*.

*relevant credit
agreement
relating to the
purchase of land*

in accordance with article 60E (7) of the *Regulated Activities Order*:

(a) a *borrower-lender-supplier agreement financing*:

...

and secured by a *legal or equitable mortgage* on that *land*;

(b) a *borrower-lender agreement* secured by a *legal or equitable*

mortgage on land; or

- (c) *a borrower-lender-supplier agreement financing a transaction which is a linked transaction in relation to:*

...

and secured by a legal or equitable mortgage on the land referred to in (a) or the land referred to in (c)(ii).

respondent

- (1) *(in DISP, FEES 5 and CREDS 9) a firm (except a UCITS qualifier), payment service provider, electronic money issuer, licensee or VJ participant covered by the Compulsory Jurisdiction, ~~Consumer Credit Jurisdiction~~ or Voluntary Jurisdiction of the Financial Ombudsman Service.*

- (2) *(in DISP 2 and 3 and FEES 5) includes, as a result of sections section 226 and 226A of the Act:*

...

- (b) *~~a person who was formerly a licensee in respect of a complaint about an act or omission which occurred at the time when it was a licensee, provided the complaint falls within a description specified in the consumer credit rules in force at the time of the act or omission; [deleted]~~*

...

- (5) *(in DISP 2 and 3 and FEES 5) includes, in accordance with article 11 of the Regulated Activities Amendment Order, unauthorised persons subject to the Compulsory Jurisdiction in relation to relevant existing credit-related complaints and relevant new credit-related complaints.*

secondary pooling event

...

- (4) *(in CASS 11) an event that occurs in the circumstances described in CASS 11.13.10R.*

security

- (1) *(except in LR and CONC) (in accordance with article 3(1) of the Regulated Activities Order (Interpretation)) any of the following investments specified in that Order:*

...

- (3) *(in CONC) in accordance with article 60L of the Regulated Activities Order, in relation to a credit agreement or a consumer hire agreement, a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right*

provided by the *borrower* or *hirer* or at the implied or express request of the *borrower* or *hirer* to secure the carrying out of the obligations of the *borrower* or *hirer* under the agreement.

specified investment

any of the following *investments* specified in Part III of the *Regulated Activities Order* (Specified Investments):

...

(of) *credit agreement* (article 88D) for the purposes of the *permission* regime with respect to the *regulated activities of entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement, this is subdivided into:*

(i) *a credit agreement (excluding high-cost short-term credit, a home credit loan agreement and a bill of sale loan agreement);*

(ii) *high-cost short-term credit;*

(iii) *a home credit loan agreement;*

(iv) *bill of sale loan agreement;*

and this has effect as if the reference to a *credit agreement* includes a reference to an article 36H agreement within the meaning of article 36H (4) of the *Regulated Activities Order*;

(og) *consumer hire agreement* (article 88E);

...

total amount payable

(1) (except in *CONC*) the *total charge for credit* plus the total amount of credit advanced.

(2) (in *CONC*) the sum of the *total charge for credit* and the *total amount of credit payable* under the *credit agreement*, as well as any *advance payment*.

total charge for credit

...

(3) (in *CONC* in relation to a *financial promotion* about a *credit agreement* secured on *land*) the sum calculated in accordance with the *rules* in *CONC* App 1.1 and, in relation to *financial promotions*, the *rules* in *CONC* 3.6.9R.

(4) (in *CONC* in relation to a *financial promotion* about all other *credit agreements*) the sum calculated in accordance with the *rules* in *CONC* App 1.2 and, in relation to *financial*

promotions, the rules in CONC 3.5.13R.

Delete the following definitions. The deleted text is not shown.

consumer credit activity [deleted]

consumer credit prohibition [deleted]

licensee [deleted]

regulated consumer credit agreement [deleted]

Annex B

Amendments to Principles for Businesses (PRIN)

In this Annex, underlining indicates new text.

1.2.3 G ...

- (1A) *Client* categorisation under *COBS 3* or *PRIN 1* Annex 1R is not relevant to *credit-related regulated activities* and therefore the guidance on *client* categorisation does not apply in relation to a *credit-related regulated activity*. The definitions of *client* and *customer* in relation to those *regulated activities* reflect the modified meaning of “consumer” in articles 36J, 39M, 60LA, 60S and 89E of the *Regulated Activities Order*, as well as the definitions of “individual” and of “relevant recipient of credit” in that Order.

...

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
...		
<u>2.5A</u>	<u>R</u>	<u>The common platform requirements on financial crime do not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u>
	...	

Part 3	Tables summarising the application of the common platform requirements to different types of firm
	...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society and full-scope UK AIFMs of unauthorised AIFs
...				
SYSC 6.3.1R	Rule	Rule	Rule	Rule For firms carrying on a

				<p><i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.2G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.3R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Rule does not apply to a <i>firm</i></u></p>

				for which a <u>professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i></u> , and not the <u>FCA</u> , acts as the <u>supervisory authority for the purposes of those regulations</u> . (FCA Handbook only)
SYSC 6.3.4G	Guidance	Guidance	Guidance	Guidance For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i> . <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the FCA, acts as the supervisory authority for the purposes of those regulations</u> . (FCA Handbook only)
SYSC 6.3.5G	Guidance	Guidance	Guidance	Guidance. For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i> . <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the FCA, acts as the</u>

				<p><u>supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
<p>SYSC 6.3.6G</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>.</p> <p><u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
<p>SYSC 6.3.7G</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>.</p> <p><u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>

<p>SYSC 6.3.8R</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the firm. Rule does not apply to <i>firm</i> with a <i>limited permission</i> for <i>entering into a regulated credit agreement as lender</i>. <u>Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
<p>SYSC 6.3.9R</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the firm. Rule does not apply to <i>firm</i> with a <i>limited permission</i> for <i>entering into a regulated credit agreement as lender</i>. <u>Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the</u></p>

				<u>FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)
SYSC 6.3.10G	Guidance	Guidance	Guidance	Guidance For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i> . <u>Guidance does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)
SYSC 6.3.11G	Guidance	Guidance	Guidance	Guidance For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i> . <u>Guidance does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)

Annex D

Amendments to Threshold Conditions (COND)

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

1.1A Application

...

1.1A.5 G ...

To what extent does COND apply to credit firms with limited permission?

- 1.1A.5A G (1) The FCA threshold conditions apply to a person that carries on, or seeks to carry on, only relevant credit activities (within paragraph 2G of Schedule 6 to the Act) and which therefore has, or is applying for, limited permission with a number of modifications (see article 10(19) of the Regulated Activities Amendment Order). Regulated activities a person carries on in relation to which sections 20(1) and (1A) and 23(1A) of the Act do not apply as a result of section 39(1D) of the Act are disregarded for this purpose.
- (2) For a person within (1), the FCA threshold conditions are modified as follows:
- (a) in relation to paragraph 2C of Schedule 6 to the Act (Effective supervision), paragraphs (a), (b) and (e) of subparagraph (1) do not apply (see COND 2.3);
- (b) in relation to paragraph 2D of Schedule 6 to the Act (Appropriate resources), the person has adequate financial resources if it is capable of meeting its debts as they fall due (see COND 2.4);
- (c) paragraph 2F of Schedule 6 to the Act (Business model) does not apply (see COND 2.7).
- (3) Paragraph 2G of Schedule 6 to the Act defines relevant credit activity for the purposes of the FCA Threshold Conditions. The interpretation of some of the key expressions used in this specific context is as follows:
- (a) “borrower” includes any person providing a guarantee or indemnity under an agreement, and a person to whom the rights and duties of the borrower have passed by assignment or operation of law;

- (b) “supplier” means a person whose main business is to sell goods or supply services and not to carry on a regulated activity, other than entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement;
- (c) “customer” means a person to whom a supplier sells goods or supplies services or agrees to do so;
- (d) “domestic premises supplier” means a supplier who sells goods or supplies services to customers who are individuals while physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a supplier who does so on an occasional basis is not to be treated as a “domestic premises supplier”).
- (4) In summary, the following credit-related regulated activities are relevant credit activities for the purposes of the FCA Threshold Conditions:
- (a) credit broking when carried on:
- (i) by a supplier (other than a domestic premises supplier) for the purposes of or in connection with the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the credit agreement or the hirer under the consumer hire agreement); or
- (ii) in relation to a green deal plan; or
- (iii) in relation to a consumer hire agreement where the goods being hired is a vehicle;
- although, other than where the credit broking is carried on by a not-for-profit body, the credit broking will not be a relevant credit activity where it relates to an agreement under which the obligation of the borrower to repay or the hirer to pay is secured, or is to be secured, by a legal mortgage on land;
- (b) consumer credit lending if carried on by a local authority or if:
- (i) it is carried on by a supplier;
- (ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit; and

(iii) the regulated credit agreement is not a hire purchase agreement or a conditional sale agreement;

although, other than where the consumer credit lending is carried on by a not-for-profit body, the consumer credit lending will not be a relevant credit activity if it relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land;

(c) entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement although, other than where these activities are carried on by a not-for-profit body, entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement will not be a relevant credit activity if the obligation of the hirer to pay under the agreement is secured, or is to be secured, by a legal mortgage on land;

(d) debt adjusting or debt counselling when carried on:

(i) by a supplier who also carries on credit broking within (a)(i);

(ii) by a person in connection with an activity within (b) or (c) which the person also carries on;

(iii) by a not-for-profit body;

although, other than where the debt adjusting or debt counselling is carried on by a not-for-profit body, the debt adjusting or debt counselling will not be a relevant credit activity if it relates to an agreement under which the obligation of the borrower to repay or the hirer to pay is secured, or is to be secured, by a legal mortgage on land;

(e) providing credit information services where carried on by a person in connection with an activity within (a) to (d) which the person also carries on;

(f) agreeing to carry on an activity within (a) to (e).

...

2.3 Effective supervision

...

Paragraph 2C of Schedule 6 to the Act

2.3.1A UK ...

(1A) Paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are-

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.

...

2.3.1BA G For the purposes of paragraph 2C (1A) of Schedule 6 to the Act, relevant credit activity is defined in paragraph 2G of Schedule 6 to the Act. Guidance on the meaning of relevant credit activity is given in COND 1.1A.5AG.

...

2.4 Appropriate resources

...

2.4.1A UK ...

(3) The Except in a case within sub-paragraph (3A), the matters which are relevant in determining whether A has appropriate financial resources include-

...

(3A) Where the only regulated activities that A carries on, or seeks to carry on, are-

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by A,

A has adequate financial resources if A is capable of meeting A's debts as they fall due.

...

2.4.1BA G For the purposes of paragraph 2D (3A) of Schedule 6 to the Act, relevant credit activity is defined in paragraph 2G of Schedule 6 to the Act. Guidance

on the meaning of relevant credit activity is given in COND 1.1A.5AG.

...

2.7 **Business model**

Paragraph 2F to Schedule 6 of the Act

2.7.1 UK ...

(3) This paragraph does not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are-

(a) relevant credit activities, and

(b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.

...

2.7.2A G For the purposes of paragraph 2F(3) of Schedule 6 to the Act, relevant credit activity is defined in paragraph 2G of Schedule 6 to the Act. Guidance on the meaning of relevant credit activity is given in COND 1.1A.5AG.

Annex E

Amendments to the General Provisions (GEN)

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

- 1.2.2A R (1) ...
- (2) Paragraph (1) does not apply to statements that explain, in a way that is fair, clear and not misleading, that:
- (a) ...
 - (b) ~~the firm has a limited permission;~~ [deleted]
 - (c) ...
- ...
- (4) ~~Where a firm with a limited permission refers to its permission in a public statement or in relation to a client, it must explain in a fair, clear and not misleading way that the permission is a limited permission.~~ [deleted]

Annex F

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

4.1 Application

Who? What?

4.1.1 R This chapter applies to a *firm*:

(1) ...

(2) *communicating or approving a financial promotion* other than:

...

(c) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the *Act* if made by an *authorised person* (*firms* may not *communicate* or *approve* such promotions); or

(d) a financial promotion in relation to a credit agreement, a consumer hire agreement or a credit-related regulated activity.

Annex G

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

1.6 ~~Application to mortgages in relation to the Consumer Credit Act 1974~~ Distinguishing regulated mortgage contracts and regulated credit agreements

1.6.1 G *MCOB* applies to *regulated mortgage contracts* entered into on or after 31 October 2004. ~~Variations made on or after that date to contracts entered into before that date are not subject to FCA regulation but may be subject to the Consumer Credit Act 1974.~~ A contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date, will not be a *regulated mortgage contract* but may be a *regulated credit agreement* to which the *CCA* and *CONC* apply. If, however, a new contract is entered into on or after 31 October 2004, replacing the previous contract, this may be a *regulated mortgage contract*. *PERG* 4.4.13G contains *guidance* on the variation of contracts entered into before 31 October 2004.

1.6.2 G *Principle 2* requires a *firm* to conduct its business with due skill, care and diligence. The purpose of *MCOB* 1.6.3R is to reinforce this. The *FCA* would expect *firms* to take appropriate steps to determine whether any mortgage it proposes to enter into is subject to *FCA* regulation and, if so, whether it is a *regulated mortgage contract* or a *regulated credit agreement*.

...

1.6.4 R If, notwithstanding the steps taken by a *firm* to comply with *MCOB* 1.6.3R, it transpires that a mortgage which the firm has treated as unregulated or as a *regulated credit agreement* is in fact a *regulated mortgage contract*, the *firm* must as soon as practicable after the correct status of the mortgage has been established:

- (1) contact the *customer* and provide him with the following information in a *durable medium*:
 - (a) a statement that the mortgage contract is a *regulated mortgage contract* ~~subject to FCA regulation, stating in particular the position with regard to redress and compensation;~~ and
 - (b) ~~(where relevant) a statement that the Consumer Credit Act 1974 will not apply to the mortgage contract and that any Consumer Credit Act rights or requirements set out in previous communications will not apply;~~

- (i) where the *firm* has treated the mortgage as unregulated, a statement that the mortgage contract is subject to *FCA* regulation, stating in particular the position with regard to redress and compensation; or
 - (ii) where the *firm* has treated the mortgage as a *regulated credit agreement*, a statement that:
 - (A) neither the *CCA* nor *CONC* will apply to the mortgage contract;
 - (B) any rights or requirements arising under the *CCA* or *CONC* set out in previous communications will not apply; and
 - (C) *MCOB* will apply to the mortgage contract.
 - (2) ...
- 1.6.5 G ...
 - (3) *MCOB* 1.6.3R and *MCOB* 1.6.4R do not override the application of *MCOB* to any *regulated mortgage contract*. *MCOB* applies notwithstanding a *firm's* genuine belief that a mortgage is unregulated or is a *regulated credit agreement*. In deciding whether to take disciplinary action as a result of a breach of *MCOB*, the *FCA* will take into account whether the action by the *firm* was reckless or deliberate (see *DEPP* 6.2.1G(1)(a)).
- ...
- 3.1.8 G As a result of ~~articles 90 and 91 of the *Regulated Activities Order*~~ this chapter and *CONC* 3:
 - (1) a *financial promotion* of ~~*qualifying credit*~~ is not subject to the advertising provisions of the Consumer Credit Act 1974, unless it is ~~an exempt generic promotion~~ *CONC* 3 to the extent that it relates to *qualifying credit*; and
 - (2) where a *firm* makes a *communication*, which consists of a *financial promotion* of *qualifying credit* and ~~information relating to a *financial promotion*~~ of a different form of lending that is not *qualifying credit* (for example an unsecured personal loan), the content of the latter will need to comply with the relevant advertising provisions of the ~~Consumer Credit Act 1974~~ *CONC* 3.
- ...

5.6.102 R Under the sub-heading 'Credit card', the *illustration* must:

...

(2) if a credit card is offered and it is a *mortgage credit card*:

...

(b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than ~~those provided~~ the rights that the customer would have under the Consumer Credit Act 1974 and CONC if the card were issued under a regulated credit agreement, include the following text: 'This card will not give you a number of the statutory rights associated with traditional credit cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your mortgage offer will tell you more about this.'

...

5.6.106 R (1) Where additional features are included in accordance with *MCOB* 5.6.92R and these are credit facilities that do not meet the definition of a *regulated mortgage contract* or a *regulated credit agreement*, the relevant parts of Section 12 of the *illustration* must include the following text:

'This additional feature is not regulated by the *FCA*'.

(2) Where additional features are included in accordance with *MCOB* 5.6.92R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 12 of the *illustration* must include the following text ~~after the text in (1):~~ 'but is regulated under the Consumer Credit Act 1974. This additional feature is regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available.'

...

6.4.4 R The *illustration* provided as part of the *offer document* in accordance with *MCOB* 6.4.1R(1) must meet the requirements of *MCOB* 5.6 (Content of illustrations) with the following modifications:

...

- (11) where additional features are included in accordance with *MCOB* 5.6.92R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 12 of the *illustration* that is part of the *offer document* must include the following text:
"This credit facility is regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available";

...

...

9.4.102 R Under the sub-heading "Credit card", the *illustration* must:

...

- (2) if a credit card is offered and it is a *mortgage credit card*:

...

- (b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than ~~those provided~~ the rights that the customer would have under the Consumer Credit Act 1974 and CONC if the card were issued under a regulated credit agreement, include the following text: "This card will not give you a number of the statutory rights associated with traditional credit cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your lifetime mortgage offer will tell you more about this."

...

9.4.106 R (1) Where additional features are included in accordance with *MCOB* 9.4.91R and these are credit facilities that do not meet the definition of a *regulated mortgage contract* or a regulated credit agreement, the relevant parts of Section 14 of the *illustration* must include the following text:

"This additional feature is not regulated by the *FCA*."

- (2) Where additional features are included in accordance with *MCOB* 9.4.91R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 14 of the *illustration* must include the following text ~~after the text in (1):~~ "but is regulated under the Consumer Credit Act 1974. This additional feature is

regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available."

...

- 9.5.4 R The *illustration* provided as part of the *offer document* in accordance with *MCOB* 6.4.1R(1) must meet the requirements of *MCOB* 9.4, with the following modifications:

...

- (10) for a *lifetime mortgage*:

- (a) where additional features are included in accordance with *MCOB* 9.4.91R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 14 of the *illustration* that is part of the *offer document* must include the following text: "This credit facility is regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available.";

...

- 10.3.2 G This calculation method is the same (with the exception of *MCOB* 10.3.8R(1) and (2)) as that described in ~~the Consumer Credit (Total Charge for Credit) Regulations 1980 (SI 1980/51) as amended CONC App 1.1. Because of this, some~~ Some of the terminology is different from that used elsewhere in *MCOB*, e.g. the references to 'transactions' should be read as relating to *secured lending*. ~~As a guide for firms, MCOB 10 Annex 1 G lists the substantively identical provisions in MCOB 10 and the 1980 Regulations.~~

...

MCOB 10 Annex 1G (A guide to the substantively identical provisions of *MCOB* 10 and the Consumer Credit (Total Charge for Credit) Regulations 1980) is deleted in its entirety. The deleted text is not shown.

- 12.3.2 G A *firm* can choose the method it employs for calculating *early repayment charges* in accordance with *MCOB* 12.3.1R. A ~~firm~~ firm should not use the 'Rule of 78' ~~(as contained in Schedule 2 of the Consumer Credit (Rebate on Early Settlement) Regulations 1983)~~, which is not appropriate as it

effectively overstates the cost to the mortgage lender.

Annex H

Amendments to the Client Assets sourcebook (CASS)

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

1.2 General application: who? what?

...

General application: what?

1.2.7 G ...

(7) The debt management client money chapter applies to CASS debt management firms receiving or holding client money for, or on behalf of, a client in the course of or in connection with debt management activity.

1.2.8 G ...

(5) The debt management client money chapter generally applies in respect of relevant dealings with the client category known as customers. In general, the client categories of retail clients, professional clients, as well as eligible counterparties, have no relevance to credit-related regulated activities, including debt management activities.

...

1.2.11 R Where a firm is subject to two or more of the client money chapters, ~~and~~ the insurance client money chapter and the debt management client money chapter, it must ensure segregation between money held under each chapter, including that money held under different chapters is held, in different, separately designated, *client bank accounts or client transactions accounts*.

...

1.4 Application: particular activities

...

Debt management activities

- 1.4.15 G (1) The *debt management client money chapter* applies to a *CASS debt management firms* receiving or holding *client money*.
- (2) The *mandate rules* apply, where relevant, to *CASS debt management firms carrying on debt management activity*.

...

8 Mandates

8.1 Application

- 8.1.1 R This chapter (the *mandate rules*) applies to a *firm* when it has a *mandate* in the course of, or in connection with, the *firm's*:

...

- (2) *insurance mediation activity*, except where it relates to a *reinsurance contract*;

- (3) *debt management activity*.

...

- 8.1.2A R The *mandate rules* do not apply to a *firm*:

- (1) in relation to *client money* that the *firm* is holding in accordance with *CASS 5* or *CASS 7* (including *client money* that the *firm* has allowed another person to hold or control in accordance with *CASS 7.5.2R*) or *CASS 11*; or

...

Insert the following new chapter after *CASS 10*. The text is not underlined

11 Debt management client money chapter

11.1 Application

- 11.1.1 R This chapter (the *debt management client money chapter*) applies to a *CASS debt management firm* that receives or holds *client money* as set out in this chapter.

- 11.1.2 G The requirements imposed on a *CASS debt management firm* that holds *client money* vary depending on whether a *firm* is classified as a *CASS small debt management firm* or a *CASS large debt management firm* in *CASS 11.2.3R* (*CASS debt management firm types*). *CASS 11.1.4R* to *CASS*

11.1.6R indicate which rules in the *debt management client money chapter* apply to which category of *firm*.

11.1.3 G The *debt management client money chapter* applies (to the extent indicated by CASS 11.1.4R to CASS 11.1.6R) to a *CASS debt management firm*, even if at the date of the determination or, as the case may be, the notification, referred to in CASS 11.2.4R, the *CASS debt management firm* is not holding *client money*, provided that:

- (1) it held *client money* in the previous calendar year; or
- (2) it projects to hold *client money* in the current calendar year.

Application to CASS small debt management firms

11.1.4 R Subject to CASS 11.1.6R, only the rules and guidance in the *debt management client money chapter* listed in the table below apply to *CASS small debt management firms*.

Reference	Rule
CASS 11.1.1R to CASS 11.1.4R and CASS 11.1.6R	Application
CASS 11.2.1R to CASS 11.2.9R	Firm classification
CASS 11.3.1R to CASS 11.3.2R and CASS 11.3.6R	Responsibility for CASS operational oversight
CASS 11.4.1G to CASS 11.4.4G	Definition of client money and discharge of fiduciary duty
CASS 11.5.1R and CASS 11.5.2R	Organisational requirements
CASS 11.6.1R and CASS 11.6.2G	Statutory trust
CASS 11.7.1G and CASS 11.7.5G	Selecting an approved bank at which to hold client money
CASS 11.8.1G to CASS 11.8.13R	Client bank account acknowledgement letters
CASS 11.9.1R to CASS 11.9.13G	Segregation and the operation of client money accounts
CASS 11.10.1R to CASS	Payments to creditors

11.10.7G	
CASS 11.11.1R to CASS 11.11.12R , CASS 11.11.30R and CASS 11.11.32G	Records, accounts and reconciliations
CASS 11.12.1G to CASS 11.12.7R	CASS 11 resolution pack
CASS 11.13.1R to CASS 11.13.14R	Client money distribution in the event of a failure of a firm or approved bank

Application to CASS large debt management firms

- 11.1.5 R Subject to CASS 11.1.6R, the rules and guidance in the *debt management client money chapter* apply to *CASS large debt management firms*, except where indicated otherwise in the relevant rule.

Solicitors

- 11.1.6 R (1) An *authorised professional firm* regulated by the Law Society of England and Wales, the Law Society of Scotland or the Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the following rules of its *designated professional body*, must comply with those rules and, if it does so, it will be deemed to comply with the *debt management client money chapter*.
- (2) The relevant rules are:
- (a) if the *firm* is regulated by the Law Society of England and Wales, the SRA Accounts Rules 2011;
 - (b) if the *firm* is regulated by the Law Society of Scotland, the Law Society of Scotland Practice Rules 2011; and
 - (c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

11.2 Firm classification

- 11.2.1 R (1) A *CASS debt management firm* must, once every year and by the time it is required to make a notification in accordance with CASS 11.2.4R, determine whether it is a *CASS large debt management firm* or a *CASS small debt management firm* according to the amount of *client money* which it held during the previous year or, if it did not hold *client money* during the previous year, according to the amount of *client money* it projects to hold in the following year, in each case using the limits set out in the table in CASS 11.2.3R.

- (2) For the purpose of determining its '*CASS debt management firm type*' in accordance with *CASS 11.2.3R*, a *CASS debt management firm* must:
- (a) if it currently holds *client money*, calculate the highest total amount of *client money* held during the previous calendar year ending on 31 December and use that figure to determine its '*CASS debt management firm type*';
 - (b) if it did not hold *client money* in the previous calendar year but projects that it will do so in the current calendar year, calculate the highest total amount of *client money* that it projects that it will hold during that year and use that figure to determine its '*CASS debt management firm type*'.

11.2.2 R For the purpose of calculating the value of the total amounts of *client money* that it holds on any given *day* during a calendar year (in complying with *CASS 11.2.1R*) a *CASS debt management firm* must base its calculation on accurate internal records of *client money* holdings. A *CASS large debt management firm* must do this using the internal reconciliations performed during the previous year that are prescribed in *CASS 11.11.13R*. A *CASS small debt management firm* must use the records used in carrying out checks required of it under *CASS 11.11.7R*.

11.2.3 R CASS debt management firm types

CASS debt management firm type	Highest total amount of <i>client money</i> held during the <i>CASS debt management firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year
<i>CASS large debt management firm</i>	An amount equal to or greater than £1 million
<i>CASS small debt management firm</i>	Less than £1 million

Notification

- 11.2.4 R Once every calendar year, a *CASS debt management firm* must notify the *FCA*, in writing, of the information in (1), (2) or (3), as applicable, and the information in (4), in each case no later than the *day* specified in (1) to (4):
- (1) if it held *client money* in the previous calendar year, the highest total amount of *client money* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January; or
 - (2) if it did not hold *client money* in the previous calendar year but at any point up to the fifteenth *business day* of January the *firm* projects that it will do so in the current calendar year, the highest total

amount of *client money* that the *firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or

- (3) in any other case, the highest total amount of *client money* that the *firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the *firm* begins to hold *client money*; and
- (4) in every case, of its 'CASS *debt management firm* type' classification, notification of which must be made at the same time the *firm* makes the notification under (1), (2) or (3).

11.2.5 R For the purpose of the annual notification in CASS 11.2.4R, a *CASS debt management firm* must apply the calculation rule in CASS 11.2.2R.

Option to be treated as a CASS large debt management firm

11.2.6 G CASS 11.2.7R provides a *CASS debt management firm* with the ability to opt in to a higher category of 'CASS *debt management firm* type'. This may be useful for a *CASS debt management firm* whose holding of *client money* is near the upper categorisation limit for a *CASS small debt management firm*.

11.2.7 R (1) Notwithstanding CASS 11.2.3R, provided that the conditions in (2) are satisfied, a *CASS debt management firm* that would otherwise be classified as a *CASS small debt management firm* under the limits provided for in CASS 11.2.3R may elect to be treated as a *CASS large debt management firm*.

(2) The conditions to which (1) refers are that in either case:

- (a) the election is notified to the *FCA* in writing;
- (b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and
- (c) the *FCA* has not objected.

Effective date of firm type

11.2.8 R A *firm's* 'CASS *debt management firm* type' and any change to it takes effect:

- (1) if the *firm* notifies the *FCA* in accordance with CASS 11.2.4R(1) or CASS 11.2.4R(2), on 1 February following the notification; or
- (2) if the *firm* notifies the *FCA* in accordance with CASS 11.2.4R(3), on the *day* it begins to hold *client money*; or
- (3) if the *firm* makes an election under CASS 11.2.7R and provided the conditions in CASS 11.2.7R(2) are satisfied, on the *day* the

notification made under CASS 11.2.7R(2)(a) states that the election is intended to take effect.

- 11.2.9 G Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Debt Management Client Assets Firm Classification".

11.3 Responsibility for CASS operational oversight

CASS small debt management firm other than a not-for-profit debt advice body

- 11.3.1 R A *CASS small debt management firm*, other than a *not-for-profit debt advice body*, must allocate to a *director* or *senior manager* performing a *significant-influence function* responsibility for:

- (1) oversight of the *firm's* operational compliance with CASS 11;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a CCR005 return in accordance with *SUP* 16.12.29CR.

CASS small debt management firm that is a not-for-profit debt advice body

- 11.3.2 R A *CASS small debt management firm* that is a *not-for-profit debt advice body* must allocate to a *director* or *senior manager*:

- (1) oversight of the *firm's* operational compliance with CASS 11;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a CCR005 return in accordance with *SUP* 16.12.29CR.

CASS large debt management firm: the CASS operational oversight function (CF10a)

- 11.3.3 G CASS 11.3.4R describes the *FCA controlled function* known as the *CASS operational oversight function* (CF10a) in relation to *CASS large debt management firms*, including *not-for-profit debt advice bodies*. As a consequence of CASS 11.3.4R (in conjunction with *SUP* 10A.4.1R and *SUP* 10A.7.9AR), in a *CASS large debt management firm* (including a *not-for-profit debt advice body* fitting into that category) the function described in CASS 11.3.4R is required to be discharged by a *director* or *senior manager* who is an *approved person* under the *approved persons* regime provided for in *SUP*.

- 11.3.4 R A *CASS large debt management firm* must allocate to a *director* or *senior*

manager the function of:

- (1) oversight of the operational effectiveness of that *CASS debt management firm's* systems and controls that are designed to achieve compliance with CASS 11;
- (2) reporting to the *CASS debt management firm's governing body* in respect of that oversight; and
- (3) completing and submitting a CCR005 return to the *FCA* in accordance with SUP 16.12.29CR.

11.3.5 R If, at the time a *CASS debt management firm* becomes a *CASS large debt management firm* in accordance with CASS 11.2.8R, the *firm* is not able to comply with CASS 11.3.4R because it has no *director* or *senior manager* who is an *approved person* in respect of the *CASS operational oversight function*, the *firm* must:

- (1) take the necessary steps to ensure that it complies with CASS 11.3.4R as soon as practicable, which must at least include submitting an application for a *candidate* in respect of the *CASS operational oversight function* within 30 *business days* of the *firm* becoming a *CASS large debt management firm*; and
- (2) until such time as it is able to comply with CASS 11.3.4R, allocate to a *director* or *senior manager* performing a *significant-influence function* responsibility for:
 - (a) oversight of the *firm's* operational compliance with CASS 11;
 - (b) reporting to the *firm's governing body* in respect of that oversight; and
 - (c) completing and submitting a CCR005 return to the *FCA* in accordance with SUP 16.12.29CR.

Record of responsibility for CASS operational oversight

- 11.3.6 R
- (1) Subject to (2), a *CASS debt management firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with, as applicable, CASS 11.3.1R, CASS 11.3.2R, and CASS 11.3.4R.
 - (2) A *CASS small debt management firm* must make and retain such a record only where it allocates responsibility to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.
 - (3) A *CASS debt management firm* must ensure that a record made under this *rule* is retained for a period of five years after it is made.

11.4 Definition of client money and the discharge of fiduciary duty

- 11.4.1 G CASS 11 provides important safeguards for the protection of *client money* held by *CASS debt management firms* that sit alongside the fiduciary duty owed by firms in relation to *client money*. CASS 11.4.2R to CASS 11.4.4G provide *guidance* and *rules* for when *money* ceases to be *client money* for the purposes of both those rules and of the fiduciary duty which *CASS debt management firms* owe to *clients* in relation to *client money*.
- 11.4.2 R *Money* ceases to be *client money* if:
- (1) it is paid to the *client*, or a duly authorised representative of the *client*; or
 - (2) it is:
 - (a) paid to a third party on the instruction of the *client*, or with the specific consent of the *client*; or
 - (b) paid to a third party further to an obligation on the *firm* under any applicable law; or
 - (3) it is paid into an account of the *client* (not being an account which is also in the name of the *firm*) on the instruction, or with the specific consent, of the *client*;
 - (4) it is due and payable to the *firm* for its own account;
 - (5) it is paid to the *firm* as an excess in the *client bank account* (see CASS 11.11.12R(2) and CASS 11.11.23R(3)).
- 11.4.3 R When a *CASS debt management firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid.
- 11.4.4 G *Money* is not *client money* when it is properly due and payable to the *firm* for its own account. The circumstances in which *money* may become due and payable to the *firm* could include when fees have become due and payable from the *client* to the *firm* under the agreement between the *client* and the *firm*.

11.5 Organisational requirements

- 11.5.1 R A *CASS debt management firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.

- 11.5.2 R A *CASS debt management firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

11.6 Statutory trust

- 11.6.1 R A *CASS debt management firm* receives and holds *client money* as trustee on the following terms:
- (1) for the purposes and on the terms of the *debt management client money rules* and the *debt management client money distribution rules*;
 - (2) subject to (3), for the *clients* for whom that *money* is held, according to their respective interests in it;
 - (3) on *failure* of the *CASS debt management firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
 - (4) after all valid claims and costs under (2) and (3) have been met, for the *CASS debt management firm* itself.
- 11.6.2 G Section 137B(1) of the *Act* provides that *rules* may make provisions which result in *client money* being held by a *firm* on trust. *CASS 11.6.1R* creates such a rule in relation to *client money* held by a *CASS debt management firm*. The consequence of this rule is there is a fiduciary relationship between a *CASS debt management firm* and its *client*, under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of *failure* of the *CASS debt management firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

11.7 Selecting an approved bank at which to hold client money

- 11.7.1 G A *CASS debt management firm* owes a duty of care as a trustee to its clients in relation to *client money* and has to exercise that duty of care in deciding where to hold *client money*.
- 11.7.2 R Before a *CASS large debt management firm* opens a *client bank account* and as often as is appropriate on a continuing basis (such frequency being no less than once in each financial year) it must take reasonable steps to establish that it is appropriate for the *firm* to hold *client money* at the *approved bank* concerned.
- 11.7.3 R A *CASS large debt management firm* must consider the risks associated with

holding all *client money* with one *approved bank* and should consider whether it would be appropriate to hold *client money* in *client bank accounts* at a number of different *approved banks*.

- 11.7.4 G In complying with CASS 11.7.3R a *CASS large debt management firm* should consider as appropriate, together with any other relevant matters:
- (1) the amount of *client money* held by the *firm*;
 - (2) the amount of *client money* the firm anticipates holding at the *approved bank*; and
 - (3) the credit worthiness of the *approved bank*.
- 11.7.5 G A *CASS small debt management firm* can demonstrate compliance with CASS 11.7.1G by checking that the *person* it proposes to hold *client money* with is an *approved bank* and that nothing has come to the *firm's* attention to cause it to believe that such *person* is not an appropriate place at which to hold *client money*.
- 11.7.6 R A *CASS large debt management firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of an *approved bank*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the *approved bank* to hold *client money*.

11.8 Client bank account acknowledgement letters

- 11.8.1 G The main purposes of a *client bank account acknowledgement letter* are:
- (1) to put the *approved bank* on notice of a *firm's clients'* interests in *client money* that has been deposited with such *person*;
 - (2) to ensure that the *client bank account* has been opened in accordance with CASS 11.9.3R, and is distinguished from any account containing money that belongs to the *firm*; and
 - (3) to ensure that the *approved bank* understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account*, in respect of any liability of the *firm* to such *person* (or *person* connected to such *person*).
- 11.8.2 R (1) For each *client bank account*, a *CASS debt management firm* must, in accordance with CASS 11.8.4R, complete and sign a *client bank account acknowledgement letter* clearly identifying the *client bank account*, and send it to the *approved bank* with whom the *client bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.

- (2) Subject to CASS 11.8.6R, a *CASS debt management firm* must not hold or receive any *client money* in or into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the *approved bank* that has not been inappropriately redrafted and clearly identifies the *client bank account*.
- 11.8.3 R In drafting *client bank account acknowledgement letters* under CASS 11.8.2R a *CASS debt management firm* is required to use the relevant template in CASS 11 Annex 1R.
- 11.8.4 R When completing a *client bank account acknowledgement letter* under CASS 11.8.2R(1) a *CASS debt management firm*:
- (1) must not amend any of the *acknowledgement letter fixed text*;
 - (2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and
 - (3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.
- 11.8.5 G CASS 11 Annex 2G contains *guidance* on using the template *client bank account acknowledgement letters*, including on when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.
- 11.8.6 R (1) If, on countersigning and returning the *client bank account acknowledgement letter* to a *firm*, the relevant *approved bank* has also:
- (a) made amendments to any of the *acknowledgement letter fixed text*; or
 - (b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;
- the *client bank account acknowledgement letter* will have been inappropriately redrafted for the purposes of CASS 11.8.2R(2).
- (2) Amendments made to the *acknowledgement letter variable text*, in the *client bank account acknowledgement letter* returned to a *firm* by the relevant *approved bank*, will not have the result that the letter has been inappropriately redrafted if those amendments do not affect the meaning of the *acknowledgement letter fixed text*, have been specifically agreed with the *firm* and do not cause the *client bank account acknowledgement letter* to be inaccurate.
- 11.8.7 R A *CASS debt management firm* must use reasonable endeavours to ensure that any individual that has countersigned a *client bank account*

acknowledgement letter that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.

- 11.8.8 R A *CASS debt management firm* must retain each countersigned *client bank account acknowledgement letter* it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last *client bank account* to which the acknowledgment letter relates is closed.
- 11.8.9 R A *CASS debt management firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned an *acknowledgment letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*).
- 11.8.10 R A *CASS debt management firm* must, periodically (at least annually, and whenever it becomes aware that something referred to in a *client bank account acknowledgement letter* has changed) review each of its countersigned *client bank account acknowledgement letters* to ensure that they remain accurate.
- 11.8.11 R Whenever a *CASS debt management firm* finds a countersigned *client bank account acknowledgement letter* to contain an inaccuracy, the *firm* must promptly draw up a new replacement *client bank account acknowledgement letter* under CASS 11.8.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank*.
- 11.8.12 G Under CASS 11.8.10R, a *CASS debt management firm* should obtain a replacement *client bank account acknowledgement letter* whenever:
- (1) there has been a change in any of the parties' names or addresses or a change in any of the details of the relevant account(s) as set out in the letter; or
 - (2) it becomes aware of an error or misspelling in the letter.
- 11.8.13 R If a *CASS debt management firm's client bank account* is transferred to another *approved bank*, the *firm* must promptly draw up a new *client bank account acknowledgement letter* under CASS 11.8.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank* within 20 *business days* of the *firm* sending it to that *person*.

11.9 Segregation and the operation of client money accounts

Requirement to segregate

- 11.9.1 R A *CASS debt management firm* must take all reasonable steps to ensure that all *client money* it receives is paid directly into a *client bank account* at an

approved bank, rather than being first received into the *firm's* own account and then segregated.

- 11.9.2 G A *CASS debt management firm* should arrange for *clients* and third parties to make transfers and payments of any *money* which will be *client money* directly into the *firm's client bank accounts*.
- 11.9.3 R A *CASS debt management firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.
- 11.9.4 R Cheques received by a *CASS debt management firm*, made out to the *firm*, representing *client money* or a *mixed remittance* must be treated as *client money* from receipt by the *firm*.
- 11.9.5 R Where a *CASS debt management firm* receives *client money* in the form of cash, a cheque or other payable order, it must:
- (1) pay the *money* into a *client bank account* in accordance with *CASS 11.9.1R* promptly and no later than on the *business day* after it receives the *money*;
 - (2) if the *firm* holds the *money* overnight, hold it in a secure location in line with *Principle 10*; and
 - (3) record the receipt of the *money* in the *firm's* books and records under the applicable requirements of *CASS 11.11* (Records, accounts and reconciliations).

Mixed remittance

- 11.9.6 R If a *CASS debt management firm* receives a *mixed remittance* it must:
- (1) pay the full sum into a *client bank account* promptly and in accordance with *CASS 11.9.1R* to *CASS 11.9.5R*; and
 - (2) no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the *money* that is not *client money* out of the *client bank account*.

Allocation of client money receipts

- 11.9.7 R
- (1) A *CASS debt management firm* must allocate in its books and records any *client money* it receives to an individual *client* promptly and, in any case, no later than five *business days* following the receipt.
 - (2) Pending a *CASS debt management firm's* allocation of a *client money* receipt to an individual *client* under (1), it must record the received *client money* in its books and records as "unallocated *client money*".
- 11.9.8 R If a *CASS debt management firm* receives *money* (either in a *client bank*

account or an account of its own) which it is unable immediately to identify as *client money* or its own *money*, it must:

- (1) take all necessary steps to identify the *money* as either *client money* or its own *money*;
- (2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as “unidentified client money” while it performs the necessary steps under (1).

- 11.9.9 G If a *CASS debt management firm* is unable to identify money that it has received as either *client money* or its own *money* under CASS 11.9.8R(1), it should consider whether it would be appropriate to return the *money* to the person who sent it (or, if that is not possible, to the source from where it was received, for example, the bank). A *firm* should have regard to its fiduciary duties when considering such matters.

Money received by appointed representatives, tied agents, field representatives and other agents

- 11.9.10 R A *CASS debt management firm* must ensure that *client money* received by its *appointed representatives, field representatives* or other agents is:
- (1) received directly into a *client bank account* of the *firm*; or
 - (2) if it is received in the form of a cheque or other payable order:
 - (a) paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt; or
 - (b) forwarded to the *firm* or, in the case of a *field representative*, forwarded to a specified business address of the *CASS debt management firm*, to ensure that the *money* arrives at the specified business address promptly and, in any event, no later than the close of the third *business day* following the receipt of the *money* from the client; or
 - (3) if it is received in the form of cash, paid into a *client bank account* of the *CASS debt management firm* promptly and, in any event, no later than the next *business day* after receipt.

Interest

- 11.9.11 R A *CASS debt management firm* must pay a *client* any interest earned on *client money* held for that *client*.

Returning money to clients

- 11.9.12 R A *CASS debt management firm* must, on receipt of a written request to withdraw from a *debt management plan*, promptly return to the *client* any *client money* held by it for the *client*.
- 11.9.13 G The *FCA* would expect compliance with the requirement in *CASS 11.9.12R* to return client money promptly to require *client money* to be returned to a *client* within five *business days* of the date on which a *client's* withdrawal from a *debt management plan* takes effect.

11.10 Payments to creditors

- 11.10.1 R Where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, the *firm* must pay that *money* to creditors as soon as reasonably practicable, save in the circumstances in *CASS 11.10.3R*.
- 11.10.2 G In the *FCA's* view, the payment to creditors under *CASS 11.10.1R* should normally be within five *business days* of the receipt of cleared funds.
- 11.10.3 R The circumstances referred to in *CASS 11.10.1R* are:
- (1) the contract between the *client* and the *CASS debt management firm* expressly provides that *client money* might be held for more than five *business days* without being distributed to creditors;
 - (2) the existence of such a term expressly providing that *client money* might be held for more than five *business days* without being distributed to creditors has been separately brought to the attention of the *client* prior to his entering into the contract; and
 - (3) the *CASS debt management firm* has explained to the *client* the risks and implications, if any, of payment to creditors being delayed prior to the entry into the contract.
- 11.10.4 R On each occasion that a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan*, or for the purpose of distribution to the *client's* creditors, and it is proposed not to make a *client's* payment to creditors within five *business days* of receipt of the *client money* in the circumstances described in *CASS 11.10.3R(1)*, it must:
- (1) as soon as reasonably practicable and within the five *business day* period, inform the *client's* creditors of the fact that it has received *client money* from the *client* for the purpose of distribution to his or her creditors and that it will not distribute that *client money* to the creditors within the five *business-day* period; and
 - (2) perform daily reconciliations of the money held for the *client* concerned in accordance with the provisions of *CASS 11.11*.

- 11.10.5 R On each occasion a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan*, or for the purpose of distribution to the *client's* creditors, and is unable for any reason other than in the circumstances described in CASS 11.10.3R(1) to make a payment to the *client's* creditors within five *business days* of receipt, it must:
- (1) inform the *client* of the delay and the reason for the delay;
 - (2) inform the *client* of the risks and implications of the late payments;
 - (3) inform the *client's* creditors of this delay as soon as reasonably practicable and within the period of five *business days* of the receipt of the relevant *client money*; and
 - (4) perform daily checks of its records of the money held for the *client* concerned in accordance with the provisions of CASS 11.11.
- 11.10.6 R (1) Subject to (2), where a *CASS debt management firm* receives *client money* from a *client* in relation to a *debt management plan* or for the purpose of distribution to the *client's* creditors, and it fails to pay that *money* to creditors as soon as reasonably practicable following its receipt (see CASS 11.10.1R and CASS 11.10.2G), it must put the *client* into the financial position he would have been in had the delay not occurred.
- (2) Paragraph (1) does not apply in the circumstances described in CASS 11.10.3R or where the delay is due to circumstances beyond the *firm's* control.
- 11.10.7 G Putting a *client* into the position he would have been in had the delay not occurred under CASS 11.10.6R should include paying to the *client* a sum equivalent to the amount of any additional interest which would not have accrued but for the delay and any default charges that have been applied to the account as a result of the delay.

11.11 Records, accounts and reconciliations

Records and accounts

- 11.11.1 R A *CASS debt management firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own *money*.
- 11.11.2 G In accordance with CASS 11.11.1R, a *CASS debt management firm* must maintain internal records and accounts of the *client money* it holds (for example, a cash book). These internal records are separate to any external records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

- 11.11.3 R A *CASS debt management firm* must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the *client money* held for individual *clients*.
- 11.11.4 R A *CASS debt management firm* must maintain up-to-date records that detail all payments to, from, or made on behalf of, *clients* and written and oral contact with *clients* and their creditors.

Policies and procedures

- 11.11.5 G *CASS debt management firms* are reminded that they must, under SYSC 6.1.1R, establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* with the *rules* in this chapter.

Checks and reconciliations of internal records

- 11.11.6 G So that a *CASS debt management firm* may check that it has sufficient *money* segregated in its *client bank accounts* to meet its obligations to *clients* for whom it is undertaking *debt management activity*, it is required periodically to carry out reconciliations of its internal records and accounts to check that the total amount of *client money* that it should have segregated in *client bank accounts* is equal to the total amount of *client money* it actually has segregated in *client bank accounts*. CASS 11.11.7R to CASS 11.11.23R provide *rules* that the different types of *CASS debt management firm* are obliged to follow to meet this obligation.

Checks of internal records: CASS small debt management firm

- 11.11.7 G For a *CASS small debt management firm* to demonstrate it has maintained its records and accounts in a way envisaged by CASS 11.11.3R, it should carry out checks of its internal records and accounts that are reasonable and proportionate to its business. CASS 11.11.8R provides a rule that a *CASS small debt management firm* is obliged to follow to meet this obligation.
- 11.11.8 R A *CASS small debt management firm* must undertake periodic checks of its internal accounts and records to ensure that the amount of money it holds in its *client bank accounts* is equal to the amount of *client money* that should be segregated under CASS 11.9.
- 11.11.9 R In carrying out the checks required by CASS 11.11.8R a *CASS small debt management firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).
- 11.11.10 G The checks that a *CASS small debt management firm* is required to undertake under CASS 11.11.8R include checking that its internal records and accounts accurately record the balances of *client money* held in respect of individual *clients*, and that the aggregate of those individual *client money* balances are equal to the total *client money* segregated in its *client bank*

accounts. In undertaking the comparison between the internal records of balances of *client money* and the *client money* segregated in *client bank accounts*, a *firm* should use the previous day's closing *client money* balances and should compare those with other records relating to the same day. In determining an appropriate frequency for its record checks, a *firm* should consider the volume and frequency of transactions in its *client bank accounts*.

- 11.11.11 G In seeking to comply with its obligation to carry out checks on its internal records and accounts, a *CASS small debt management firm* may choose to follow the steps specifically required of *CASS large debt management firms* in undertaking a *CASS large debt management firm internal client money reconciliation* and *CASS large debt management firm external client money reconciliation*. A *CASS small debt management firm* which follows that procedure is likely to be regarded by the *FCA* as having fulfilled its obligation under *CASS 11.11.8R*.

CASS small debt management firms: remedying discrepancies

- 11.11.12 R Where the check of its internal records and accounts that a *CASS small debt management firm* is required to undertake under *CASS 11.11.8R* reveals a difference between the amount of *money* it holds in its *client bank accounts* and the amount of *client money* that should be held and segregated under *CASS 11.9*, a *CASS small debt management firm* must:
- (1) ensure that any shortfall in the amount held in its *client bank accounts* as compared to the amount that should be held there is made up by a prompt payment into the *firm's client bank accounts*;
 - (2) ensure that any excess in the amount held in its *client bank accounts* as compared to the amount that should be held there is promptly withdrawn from its *client bank accounts*; and
 - (3) ensure that any correction of a shortfall or excess of the kind referred to in (1) and (2) is carried out, at the latest, before the end of the *business day* following the day on which difference was discovered.

CASS large debt management firms internal client money reconciliation

- 11.11.13 R A *CASS large debt management firm* must, as regularly as is necessary, but no less often than every five *business days*, carry out a *CASS large debt management firm internal client money reconciliation*.
- 11.11.14 R A *CASS large debt management firm internal client money reconciliation* requires a *CASS large debt management firm* to check whether its *client money* resource, as determined by *CASS 11.11.16R*, on the previous *business day*, was at least equal to the *client money* requirement, as determined by *CASS 11.11.17R* as at the close of business on that day.
- 11.11.15 R In carrying out a *CASS large debt management firm internal client money*

reconciliation, a CASS large debt management firm must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

Calculating the client money resource

- 11.11.16 R The *client money* resource for *client money* held in accordance with CASS 11.11.14R is the aggregate of the balances on the *firm's client bank accounts*, as at the close of business on the previous *business day*.

Calculating the client money requirement

- 11.11.17 R (1) The *client money* requirement is the sum of:
- (a) the aggregate of all individual *client* balances calculated in accordance with CASS 11.11.21R and CASS 11.11.22R;
 - (b) the amount of any unallocated *client money* under CASS 11.9.7R;
 - (c) the amount of any unidentified *client money* under CASS 11.9.8R; and
 - (d) any other amounts of *client money* included in the calculation under (2).
- (2) For the purposes of (1)(d), the CASS debt management firm must consider whether there are amounts of *client money*, other than those in (1)(a) to (c), to which the requirement to segregate applies and that it is appropriate to include in the calculation of its *client money* requirement and, if so, adjust the calculation accordingly.
- 11.11.18 G The *client money* requirement calculated in accordance with CASS 11.11.17R should represent the total amount of *client money* a CASS debt management firm is required to have segregated in *client bank accounts* under the *debt management client money chapter*.
- 11.11.19 G *Firms* are reminded that, under CASS 11.4.3R, if a *firm* has drawn any cheques, or other payable orders, to discharge its fiduciary duty to its *clients* (for example, to return *client money* to the *client* or distribute it to the *client's* creditors), the sum concerned must be included in the *firm's* calculation of its *client money* requirement until the cheque or order is presented and paid.
- 11.11.20 G The following *guidance* applies where a CASS debt management firm receives *client money* in the form of cash, a cheque or other payable order:
- (1) In carrying out the calculation of the *client money* requirement, a CASS debt management firm may initially include the amount of *client money* received as cash, cheques or payment orders that has

not yet been deposited in a *client bank account* in line with CASS 11.9.5R. If it does so, the *firm* should ensure, before finalising the calculation, that it deducts these amounts to avoid them giving rise to a difference between the *firm's client money* requirement and *client money* resource.

- (2) In carrying out the calculation of the *client money* requirement, a *CASS debt management firm* may alternatively exclude the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with CASS 11.9.5R. If it does so, the *firm* is reminded that it must separately record the receipt of the *money* in the *firm's* books and records under CASS 11.9.5R(3).
- (3) A *CASS debt management firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* into a *client bank account* promptly and no later than on the *business day* after it receives the *money* (see CASS 11.9.5R).

11.11.21 R The individual *client* balance for each *client* must be calculated as follows:

- (1) the amount paid by the *client* to the *CASS debt management firm*;
plus

- (2) the amount of any interest, and any other sums, due to the *client*;

less:

- (3) the aggregate of the amount of money:

- (a) paid back to that *client*; and

- (b) due and payable by the *client* to the *CASS debt management firm*; and

- (c) paid out to a third party for, or on behalf of, that *client*.

11.11.22 R Where the individual *client* balance calculated in respect of an individual *client* under CASS 11.11.21R is a negative figure (because the amounts paid by or due to a *client* under CASS 11.11.21R(1) and (2) are less than the amounts paid out or due and payable by that *client* under CASS 11.11.21R(3)), that individual *client* balance should be treated as zero for the purposes of the calculation of the *firm's client money* requirement in CASS 11.11.17R.

Large debt management firms: reconciliation differences and discrepancies

11.11.23 R When a *CASS large debt management firm internal client money reconciliation* reveals a difference between the *client money* resource and its *client money* requirement a *CASS large debt management firm* must:

- (1) identify the reason for the difference;
- (2) ensure that any shortfall in the amount of the *client money* resource as compared to the amount of the *client money* requirement is made up by a payment into the *firm's client bank accounts* by the end of the *business day* following the day on which difference was discovered; and
- (3) ensure that any excess in the amount of the *client money* resource as compared to the amount of the *client money* requirement is withdrawn from the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered.

CASS large debt management firm external client money reconciliation

- 11.11.24 G The purpose of the reconciliation process required by CASS 11.11.25R is to ensure the accuracy of a *firm's* internal accounts and records against those of any third parties by whom *client money* is held.
- 11.11.25 R A *CASS large debt management firm* should perform a *CASS large debt management firm external client money reconciliation*:
- (1) as regularly as is necessary; and
 - (2) no less frequently than the *CASS large debt management firm internal client money reconciliations*; and
 - (3) as soon as reasonably practicable after the date to which the reconciliation relates;
- to ensure the accuracy of its internal accounts and records against those of *approved banks* with whom *client money* is deposited.
- 11.11.26 R A *CASS large debt management firm external client money reconciliation* requires a *CASS large debt management firm* to conduct a reconciliation between its internal accounts and records and those of any *approved banks* by whom *client money* is held.
- 11.11.27 G The *FCA* expects a *CASS large debt management firm* which carries out transactions for its clients on a daily basis to carry out a *CASS large debt management firm external client money reconciliation* on a daily basis.
- 11.11.28 R When any discrepancy is revealed by a *CASS large debt management firm external client money reconciliation*, a *CASS large debt management firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the *firm*.
- 11.11.29 R While a *CASS large debt management firm* is unable to resolve a

discrepancy arising from the *CASS large debt management firm external client money reconciliation*, and one record or a set of records examined by the *firm* during the reconciliation process indicates that there is a need to have greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own *money* into a relevant account.

Notification requirements

- 11.11.30 R A *CASS debt management firm* must inform the *FCA* in writing without delay if:
- (1) its internal records and accounts of *client money* are materially out of date or materially inaccurate so that the *firm* is no longer able to comply with the requirements in *CASS 11.11.1R* to *CASS 11.11.4R*; or
 - (2) it becomes aware that, at any time in the preceding 12 months, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money* the *firm* was required to segregate in *client bank accounts* in accordance with the segregation requirements in *CASS 11.9*.
- 11.11.31 R A *CASS large debt management firm* must inform the *FCA* in writing without delay if:
- (1) after having carried out a *CASS large debt management firm internal client money reconciliation* in accordance with *CASS 11.11.13R* it will be unable to, or materially fails to, pay any shortfall into (or withdraw any excess from) a *client bank account* so that the *firm* is unable to comply with *CASS 11.11.23R*;
 - (2) after having carried out a *CASS large debt management firm external client money reconciliation* in accordance with *CASS 11.11.25R* it will be unable to, or materially fails to, identify and correct any discrepancies in accordance with *CASS 11.11.28R*;
 - (3) it will be unable to or materially fails to conduct a *CASS large debt management firm internal client money reconciliation* in compliance with *CASS 11.11.13R*; or
 - (4) it will be unable to or materially fails to conduct a *CASS large debt management firm external client money reconciliation* in compliance with *CASS 11.11.25R*.
- 11.11.32 G *CASS debt management firms* are also reminded of their obligation to notify the *appropriate regulator* of a significant breach of a *rule* under *SUP 15.3.11R*.

11.12 CASS 11 resolution pack

- 11.12.1 G The purpose of the *CASS 11 resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in dealing with *client money* in a timely manner.
- 11.12.2 R A *CASS debt management firm* which holds *client money* must maintain at all times and be able to retrieve, in the manner described in this section, a *CASS 11 resolution pack*.
- 11.12.3 R A *CASS debt management firm* must include within its *CASS 11 resolution pack* all those documents referred to in *CASS 11.12.4R*.
- 11.12.4 R The documents in *CASS 11.12.3R* that a *CASS debt management firm* must include within its *CASS 11 resolution pack* are:
- (1) a master document containing information sufficient to retrieve each document in the *firm's CASS 11 resolution pack*;
 - (2) a document which identifies all the *approved banks* with whom *client money* may be deposited;
 - (3) a document which identifies each *appointed representative, field representative* or other agent of the *firm* which may receive *client money* in its capacity as the *firm's agent*;
 - (4) a document which identifies each *senior manager and director* and any other individual and the nature of their responsibility within the *firm* who is critical or important to the performance of operational functions related to any of the obligations imposed on the *firm* under the *debt management client money rules*;
 - (5) for all *approved banks* identified in (2) the written *client bank account acknowledgement letters* sent and received in accordance with *CASS 11.8.2R*; and
 - (6) records relating to the internal and external client money checks it is required to carry out under *CASS 11.11*.
- 11.12.5 R In relation to each document in a *CASS debt management firm's CASS 11 resolution pack* a *firm* must:
- (1) put in place adequate arrangements to ensure that an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property is able to retrieve each document as soon as practicable and, in any event, within 48 hours of that officer's appointment; and
 - (2) ensure that it is able to retrieve each document as soon as practicable and, in any event, within 48 hours where it has taken a decision to do

so or as a result of an *FCA* request.

- 11.12.6 R (1) A *CASS debt management firm* must ensure that it reviews the content of its *CASS 11 resolution pack* on an ongoing basis to ensure that it remains accurate.
- (2) In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in *CASS 11.12.4R*, a *firm* must ensure that any inaccuracy is corrected promptly and in any event no more than five *business days* after the change of circumstances arose.
- 11.12.7 R A *CASS debt management firm* must notify the *FCA* in writing immediately if it has not complied with, or is unable to comply with, *CASS 11.12.2R* and *CASS 11.12.6R*.

11.13 Client money distribution in the event of a failure of a firm or approved bank

Application

- 11.13.1 R This section (the *debt management client money distribution rules*) applies to a *CASS debt management firm* that holds *client money* which is subject to the *debt management client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

Purpose

- 11.13.2 G The *debt management client money distribution rules* seek, in the event of the *failure* of a *CASS debt management firm* or of an *approved bank* at which the *CASS debt management firm* holds *client money*, to protect *client money* and to facilitate the timely payment of sums to creditors or the timely return of *client money* to clients.

Failure of a *CASS debt management firm*: primary pooling event

- 11.13.3 R A *primary pooling event* occurs:
- (1) on the *failure* of a *CASS debt management firm*;
- (2) on the vesting of assets in a *trustee* in accordance with an 'assets requirement' imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act* where such a *requirement* is imposed in respect of all *client money* held by the *firm*.

Pooling and distribution after a primary pooling event

- 11.13.4 R If a *primary pooling event* occurs:
- (1) all *client money*:

- (a) held in the *CASS debt management firm's client bank accounts*; and
- (b) received by the *CASS debt management firm* on behalf of a *client* but not yet paid into the *firm's client bank accounts*;

is treated as pooled together to form a notional pool;

- (2) a *CASS debt management firm* must calculate the amount it should be holding on behalf of each individual client as at the time of the *primary pooling event* using the method of calculating individual client balance provided for by *CASS 11.11.21R*;
- (3) a *CASS debt management firm* must decide whether it is in the best interests of its *clients* to transfer all its *debt management activity* business to another *CASS debt management firm*.

Distribution if client money not transferred to another firm

- 11.13.5 R Where a *primary pooling* event occurs and the *client money* is not transferred to another *firm* in accordance with *CASS 11.13.4R*, a *CASS debt management firm* must distribute client money comprising the notional pool so that each client receives a sum that is rateable to their entitlement to the notional pool calculated in *CASS 11.13.4R(2)*.

Transfer of client money to another firm

- 11.13.6 G If in the event of a *primary pooling* event occurring the *debt management activity* business undertaken by a *CASS debt management firm* (“the transferor”) is to be transferred to another *CASS debt management firm* (“the transferee”), then the transferor may also move the *client money* associated with that business to the transferee.
- 11.13.7 R The remaining *client money* may be transferred under *CASS 11.13.6G* only if it will be held by the transferee in accordance with the *debt management client money chapter*, including the statutory trust in *CASS 11.6.1R*.
- 11.13.8 R If there is a *shortfall* in the *client money* transferred under *CASS 11.13.6G* then the *client money* must be allocated to each of the *clients* for whom the *client money* was held so that each client is allocated a sum which is rateable to that client’s *client money* entitlement in accordance with *CASS 11.13.4R(2)*. This calculation may be done by either transferor or transferee in accordance with the terms of any transfer.
- 11.13.9 R The transferee must, within seven *days* after the transfer of *client money* under *CASS 11.13.6G* notify *clients* that:
- (1) their *money* has been transferred to the transferee; and
 - (2) they have the option of having *client money* returned to them or to their order by the transferee, otherwise the transferee will hold the

client money for the *clients* and conduct *debt management activities* for those *clients*.

Failure of an approved bank: secondary pooling event

- 11.13.10 R A *secondary pooling event* occurs on the *failure* of an *approved bank* at which a *CASS debt management firm* holds *client money* in a *client bank account*.
- 11.13.11 R (1) Subject to (2), if a *secondary pooling event* occurs as a result of the *failure* of an *approved bank* where one or more *client bank accounts* are held then in relation to every *client bank account* of the *firm*, the provisions of CASS 11.13.12R (1), (2), and (3) will apply.
- (2) CASS 11.13.12R does not apply if, on the *failure* of the *approved bank*, the *CASS debt management firm* pays to its *clients*, or pays into a *client bank account* at an unaffected *approved bank*, an amount equal to the amount of *client money* that would have been held if a shortfall had not occurred as a result of the *failure*.
- 11.13.12 R *Money* held in each *client bank account* of the *firm* must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *client bank accounts*, that has arisen as a result of the *failure* of the *approved bank*, must be borne by all *clients* whose *client money* is held in a *client bank account* of the *firm*, rateably in accordance with their entitlements to the pool;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *CASS debt management firm* must make and retain a record of each *client's* share of the *client money* shortfall at the *failed approved bank* until the *client* is repaid; and
- (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in CASS 11.11.17R.
- 11.13.13 R The term 'which should have been held' is a reference to the failed *approved bank's* failure to hold the *client money* at the time of the pooling event.
- 11.13.14 R Any interest earned on *client money* following a *primary* or *secondary pooling event* will be due to *clients* in accordance with CASS 11.9.11R (Interest).

**11 Annex 1R CASS debt management firm client bank account acknowledgement
letter template**

[Content of Annex 1R to be inserted at a later date]

11 Annex 2G

Guidance notes for client bank account acknowledgement letters (CASS 11.8.5G)

[Content of Annex 2G to be inserted at a later date]

Amend the Transitional Provisions and Schedules as shown.

Transitional Provisions

TP 1.1

(1)	Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
13	<u>CASS 11</u>	<u>R</u>	(1)	<u>CASS 11 does not apply to a CASS debt management firm which is a not-for-profit debt advice body treated as having Part 4A permission on and after 1 April 2014 by virtue of article 60 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 until 1 October 2014, if the firm acts in accordance with the provisions of paragraphs 3.42 and 3.43 of the Debt management (and credit repair services) guidance (OFT366rev) previously issued by the Office of Fair Trading, as they were in effect immediately before 1 April 2014.</u>	Indefinitely	<u>1 April 2014</u>
(2)	<u>CASS 11 applies in relation to money held by a CASS debt management firm within (1) on 1 October 2014 to the extent that such money was received, or is held on behalf of an individual, in the course of</u>					

				or in connection with <i>debt management activity</i> carried on before that date (or business carried on before 1 April 2014 and which would, if conducted on or after 1 April 2014, be a <i>debt management activity</i>).		
14	CASS 11	R	(1)	This rule applies to a CASS <i>debt management firm</i> where the FCA or PRA has granted an application made by the firm for Part 4A permission and an interim permission the firm was treated as having ceased to have effect.	Indefinitely	1 April 2014
			(2)	CASS 11 applies in relation to money held by the CASS <i>debt management firm</i> on the date on which the written notice given by the FCA or PRA under section 55V(5) of the Act takes effect, to the extent that such money was received, or is held on behalf of an individual, in the course of or in connection with <i>debt management activity</i> carried on before that date (or business carried on before 1 April 2014 and which would, if conducted on or after 1 April 2014, be a <i>debt management activity</i>).		

Sch 1.3

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
--------------------	-------------------	--------------------	--------------------------	------------------

...				
<u>CASS 11.3.6R</u>	<u>Allocation of CASS oversight function in CASS 11.3.1R or CASS 11.3.2R, or CASS operational oversight function in CASS 11.3.4R</u>	<u>The person to whom (as applicable) the CASS oversight responsibilities have been allocated, or to whom the CASS operational oversight function has been allocated</u>	<u>Upon allocation</u>	<u>5 years (from the date the record was made)</u>
<u>CASS 11.7.6R</u>	<u>Appropriateness of a CASS large debt management firm's selection of an approved bank</u>	<u>Grounds upon which a CASS large debt management firm satisfies itself as to the appropriateness of the firm's selection of an approved bank at which to hold client money</u>	<u>Date of the selection</u>	<u>5 years (from the date the firm ceases to use the approved bank to hold client money)</u>
<u>CASS 11.8.8R</u>	<u>Client bank account acknowledgement letters sent in accordance with CASS 11.8.2R</u>	<u>Each countersigned client bank account acknowledgement letters received</u>	<u>On receipt of each letter</u>	<u>5 years (following closure of the last client bank account to which the letter relates)</u>
<u>CASS 11.8.9R</u>	<u>Demonstration that a CASS debt management firm has complied with CASS 11.8.2R to CASS 11.8.7R</u>	<u>Evidence of such compliance</u>	<u>On compliance with the relevant provision</u>	<u>None specified</u>
<u>CASS 11.9.5R</u>	<u>Money received from clients in the form of cash, cheques or other payable orders</u>	<u>Details of money received</u>	<u>On receipt</u>	<u>None specified</u>
<u>CASS 11.9.8R(2)</u>	<u>Unidentified client money under CASS 11.9.8R(2)</u>	<u>Details of unidentified client money held</u>	<u>Being unable to identify money as client money or its own money, and deciding it is reasonably prudent to so record</u>	<u>Until it performs the necessary steps to identify the money under CASS 11.9.8R(1)</u>
<u>CASS 11.11.1R</u>	<u>Client money held for each client and the CASS debt</u>	<u>All that is necessary to enable the CASS debt management firm to</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>

	<u>management firm's own money</u>	<u>distinguish client money held for one client from client money held for any other client, and from the firm's own money</u>		
<u>CASS 11.11.3R</u>	<u>Client money held for each client</u>	<u>Accurate records to ensure the correspondence between the records and accounts of the entitlement of each client for whom the CASS debt management firm holds client money with the records and accounts of the client money the firm holds in client bank accounts</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>
<u>CASS 11.11.4R</u>	<u>Payments made to, for or on behalf of clients by a CASS debt management firm and written and oral contact with clients and creditors</u>	<u>Details of payments made and of the written or oral contact</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>
<u>CASS 11.12.4R</u>	<u>A CASS debt management firm's CASS 11 resolution pack</u>	<u>The documents to which CASS 11.12.3R and CASS 11.12.4 R refer.</u>	<u>From the date on which a CASS debt management firm becomes subject to CASS 11.12.3R</u>	<u>None is specified</u>
<u>CASS 11.13.12R (3)</u>	<u>A CASS large debt management firm's record of each client's shortfall in the event of a secondary pooling event</u>	<u>Details of the shortfall</u>	<u>On the secondary pooling event occurring</u>	<u>None specified</u>

Sch 2 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
--------------------	-----------------------	--------------------------	---------------	--------------

...				
<u>CASS 11.2.4R(1) to (3)</u>	<u>The highest total amount of <i>client money</i> held in the previous year or projected to be held in the current year, as more fully described in CASS 11.2.4R</u>	<u>The highest total amount of <i>client money</i> held in the previous year or projected to be held in the current year, as more fully described in CASS 11.2.4R</u>	<u>The need to comply with CASS 11.2.4R(1) to (3)</u>	<u>By the fifteenth day of January unless contrary provision is made in CASS 11.2.4R(1) to (4)</u>
<u>CASS 11.2.4R(4)</u>	<u>A <i>firm's CASS debt management firm</i> type classification</u>	<u>A <i>firm's CASS debt management firm</i> type classification</u>	<u>The need to comply with CASS 11.2.4R(4)</u>	<u>At the same time as the notification in CASS 11.2.4R(1) to (4)</u>
<u>CASS 11.11.30R (1)</u>	<u>Non-compliance with requirements in CASS 11.11.1R to CASS 11.11.4R</u>	<u>Non-compliance with requirements in CASS 11.11.1R to CASS 11.11.4R</u>	<u>The non-compliance</u>	<u>Without delay</u>
<u>CASS 11.11.30R (2)</u>	<u>Amount of <i>money</i> segregated in <i>client bank accounts</i> is materially different from total aggregate of <i>client money</i> required to be segregated</u>	<u>The fact that there is a material difference</u>	<u>Awareness of the difference</u>	<u>Without delay</u>
<u>CASS 11.11.32R</u>	<u>A CASS <i>large debt management firm's</i> inability or failure to comply with CASS 11.11.23R, CASS 11.11.28R, CASS 11.11.13R or CASS 11.11.25R</u>	<u>The inability or failure to comply</u>	<u>Awareness of the inability or failure</u>	<u>Without delay</u>
<u>CASS 11.12.7R</u>	<u>A CASS <i>large debt management firm's</i> inability or failure to comply with CASS 11.12.2R or CASS 11.12.6R</u>	<u>The inability or failure to comply</u>	<u>Awareness of the inability or failure</u>	<u>Without delay</u>

Annex I

Amendments to the Supervision manual (SUP)

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

3.1 Application

...

3.1.2 R Applicable sections

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...			
<u>(5B)</u> <u>[FCA]</u>	<u>CASS debt management firm</u>	<u>SUP 3.1</u> <u>SUP 3.10</u> <u>SUP 3.11</u>	<u>SUP 3.1</u> <u>SUP 3.10</u>
...			

...

3.10 Duties of auditors: notification and report on client assets

Application

...

3.10.2 R An auditor of an *authorised professional firm* need not report under this section in relation to that *firm's* compliance with the *client money rules* in the *client money chapter* or the debt management client money rules if:

- (1) ...
- (2) that *firm* is subject to the rules of its *designated professional body* as specified in CASS 7.1.15R(2) or CASS 11.1.6R(2) with respect to its *regulated activities*.

...

3.10.5 Client assets report

Whether in the auditor's opinion	
(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the <i>custody rules</i> , the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> and the <i>mandate rules</i> throughout the period;
(2)	the <i>firm</i> was in compliance with the <i>custody rules</i> , the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> and the <i>mandate rules</i> , at the date at which the report has been made;
...	
(4)	if there has been a <i>secondary pooling event</i> during the period, the <i>firm</i> has complied with the <i>rules in CASS 5.6 and CASS 7A (client money distribution) and CASS 11.13 (debt management client money distribution rules)</i> in relation to that pooling event.

3 Annex 1R

Auditor's client assets report Part 1 – Auditor's Opinion

...

Opinion

In our opinion:

[The firm has maintained] [Except for...the firm has maintained] [Because of...the firm did not maintain] systems adequate to enable it to comply with [the custody rules,] [the collateral rules,] [the mandate rules] ~~and~~ [the client money rules] and [the debt management client money rules] throughout the period since [the last date at which a report was made] [the firm was authorised] [the firm became subject to SUP 3.11 and we, its auditor, became subject to SUP 3.10].*

[The firm was] [Except for...the firm was] [Because of...the firm was not] in compliance with the [the custody rules,] [the collateral rules,] [the mandate rules] ~~and~~ [the client money rules] and [the debt management client money rules] as at the period end date.*

...

In relation to the secondary pooling event during the period, the firm has complied with the rules in [CASS 5.6] ~~and~~ [CASS 7A (client money distribution)] and [CASS 11.13 (the debt management client money distribution rules)] in relation to that pooling event.

...

6.3.15 D (1) A Subject to (1A), a firm other than a *credit union* wishing to make an application under SUP 6 must apply online using the form

specified on the ONA system.

(1A) A firm wishing to make an application under SUP 6 which covers only credit-related regulated activities must submit any form, notice or application by using the form in SUP 6 Annex 5D and submitting it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

...

6.4.5 D (1) A Subject to (1A), a firm other than a credit union wishing to cancel its Part 4A permission, must apply online at the appropriate regulator website using the form specified on the ONA system.

(1A) An FCA-authorized person wishing to cancel its Part 4A permission which covers only credit-related regulated activities must submit any form, notice or application by using the form in SUP 6 Annex 6D and submitting it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

Insert new links at the address referred to below to the following form and notes

Variation of Permission (VOP) Application Consumer Credit Activities

Variation of Permission (VOP) Application Consumer Credit - notes

The form and notes set out below are new and are not underlined.

Variation of permission application form

**6 Annex D This annex consists only of one or more forms. Forms are to be found
5 through the following address:**

Supervision forms http://fshandbook.info/FS/form_links.jsp

The form and notes which form this annex are set out at the end of this instrument.

Insert the following new chapter after SUP 8. The text is not underlined.

8A Directions and determinations by the FCA waiving, varying or disapplying CCA requirements

8A.1 Application, purpose and interpretation

8A.1.1 D This chapter applies to every *firm* which:

- (1) is subject to the requirements as to the form and content of regulated agreements under the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) and the Consumer Credit (Agreements) Regulations (SI 2010/1014) made under section 60(1) of the *CCA* that wishes to apply for a direction from the *FCA* waiving or varying those requirements;
- (2) is subject to the requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement that wishes to apply for a determination by the *FCA* that that requirement can be dispensed with; and
- (3) wishes to apply for a direction from the *FCA* that the *hirer's* rights to terminate a *regulated consumer hire agreement* under section 101 of the *CCA* do not apply to *regulated consumer hire agreements* made by that *firm*.

8A.1.2 G This chapter explains how the regime works for obtaining:

- (1) a direction from the *FCA* waiving or varying the requirements as to the form and content of regulated agreements under the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) and the Consumer Credit (Agreements) Regulations (SI 2010/1014) made under section 60(1) of the *CCA*;
- (2) a determination by the *FCA* that the requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement can be dispensed with; and
- (3) a direction from the *FCA* that the *hirer's* rights to terminate a *regulated consumer hire agreement* under section 101 of the *CCA* do not apply to *regulated consumer hire agreements* made by the relevant *firm*.

8A.1.3 G Unless italicised, and except where the contrary intention appears, expressions used in this chapter have the same respective meanings as in the *CCA*.

8A.2 Introduction and conditions

Directions under section 60(3) of the CCA

- 8A.2.1 G Under section 60(3) of the CCA, if, on an application made to the FCA by a *firm* carrying on a consumer credit business or a consumer hire business, it appears to the FCA impracticable for the *firm* to comply with any requirement of the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) or the Consumer Credit (Agreements) Regulations (SI 2010/1014) in a particular case, it may direct that the requirement be waived or varied in relation to the regulated agreement and subject to such conditions (if any) as it may specify.
- 8A.2.2 G Under section 60(4) of the CCA, the FCA will make the direction only if it is satisfied that to do so would not prejudice the interests of debtors or hirers.
- 8A.2.3 G An application may be made under section 60(3) of the CCA only if it relates to:
- (1) a consumer credit agreement secured on land; or
 - (2) a consumer credit agreement under which a person takes an article in *pawn*; or
 - (3) a consumer credit agreement under which the creditor provides the debtor with a credit that exceeds £60,260; or
 - (4) a consumer credit agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him; or
 - (5) a consumer hire agreement.

Determinations under section 64(4) of the CCA

- 8A.2.4 G The requirement under section 64(1)(b) of the CCA to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement does not apply in the case of the agreements described in SUP 8A.2.5G, if:
- (1) on application by a *firm* to the FCA, the FCA has determined, having regard to:
 - (a) the manner in which antecedent negotiations for the relevant agreements with the *firm* are conducted; and
 - (b) the information provided to debtors or hirers before those agreements are made;

the requirement can be dispensed with without prejudicing the interests of debtors or hirers; and

- (2) any conditions imposed by the *FCA* in making the determination are complied with.

- 8A.2.5 G A determination under 64(4) of the *CCA* may only be made in respect of agreements specified in the Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983.

Directions under section 101(8) of the *CCA*

- 8A.2.6 G If on an application made to the *FCA* by a *firm* carrying on a consumer hire business, it appears to the *FCA* that it would be in the interests of hirers to do so, the *FCA* may direct that subject to such conditions (if any) as it may specify, section 101 of the *CCA* shall not apply to consumer hire agreements made by that *firm*.

Transitional provision

- 8A.2.7 G Under article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013, any of the following given or made by the Office of Fair Trading which were in effect immediately before 1 April 2014 have effect as if they had been given or made by the *FCA*:

- (1) a direction given under section 60(3) of the *CCA* (form and content of agreements);
- (2) a determination made under section 64(4) of the *CCA* (duty to give notice of cancellation rights) and the Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983;
- (3) a direction given under section 101(8) or (8A) of the *CCA* (right to terminate hire agreement).

8A.3 Applying for a direction or determination by the *FCA* waiving, varying or disapplying *CCA* requirements

Publication

- 8A.3.1 G The *FCA* intends to include any direction or determination made by the *FCA* waiving, varying or disapplying *CCA* requirements in the public register under section 347 of the *Act*.

Form and method of application

- 8A.3.2 D A *firm* wishing to apply for a direction under section 60(3) of the *CCA*, must complete the application form in *SUP* 8A Annex 1D and submit it to the *FCA* in the way set out in *SUP* 15.7.4R, *SUP* 15.7.5AR, *SUP* 15.7.

6AG and SUP 15.7.9G.

- 8A.3.3 D A *firm* wishing to apply for a determination under section 64(4) of the CCA must apply to the FCA in the way set out in SUP 15.7.4R, SUP 15.7.5AR, SUP 15.7.6AG and SUP 15.7.9G.
- 8A.3.4 D A *firm* wishing to apply for a direction under section 101(8) of the CCA must complete the application form in SUP 8A Annex 2D and the information form in SUP 8A Annex 3D, and submit them to the FCA in the way set out in SUP 15.7.4R, SUP 15.7.5AR, SUP 15.7.6AG and SUP 15.7.9G.

Procedure on receipt of an application

- 8A.3.5 G The FCA will acknowledge an application promptly and, if necessary, will seek further information from the *firm*. The time taken to determine an application will depend on the issues it raises. However, the FCA will aim to give decisions within 20 *business days* of receiving an application which includes sufficient information. If the FCA expects to take longer, it will tell the *firm* and give an estimated decision date. A *firm* should make it clear in the application if it needs a decision within a specific time.
- 8A.3.6 G The FCA will treat a *firm's* application as withdrawn if it does not hear from the *firm* within 20 *business days* of sending a communication which requests or requires a response from the *firm*. The FCA will not do this if the *firm* has made it clear to the FCA in some other way that it intends to pursue the application.
- 8A.3.7 G If the FCA decides not to give a direction or a determination, it will give reasons for the decision.
- 8A.3.8 G A *firm* may withdraw its application at any time up to the giving of the direction or determination. In doing so, a *firm* should give the FCA its reasons for withdrawing the application.

8A.4 Notification of altered circumstances relating to directions or waivers

- 8A.4.1 R A *firm* which has applied for or has been granted a direction or determination must notify the FCA immediately if it becomes aware of any matter which could affect the continuing relevance or appropriateness of the application or the direction or determination.
- 8A.4.2 G *Firms* are also referred to SUP 15.6 (Inaccurate, false or misleading information). This requires a *firm* to notify the FCA if false, misleading, incomplete or inaccurate information has been provided (see SUP 15.6.4R). This would apply in relation to information provided in an application for a direction or a determination.

8A.5 Revoking or varying directions and determinations

- 8A.5.1 G The *FCA* may revoke or vary any of the directions or determinations referred to in this chapter.

8A Annex 1D Application form for a direction under section 60(3) of the *CCA*

<p>CONSUMER CREDIT ACT 1974</p> <p>Application for a direction under section 60(3) A direction waiving or varying a requirement of regulations made under section 60(3)</p> <p>What is a direction under section 60(3)? Regulated agreements made by a consumer credit or consumer hire business must comply with the requirements of the Consumer Credit (Agreements) Regulations 1983 or the Consumer Credit (Agreements) Regulations 2010, as applicable. Where it is impracticable to comply with those requirements, it is possible to apply to the Financial Conduct Authority (FCA) for a direction under section 60(3) of the Act to waive or vary the requirements for some types of agreement (see below). The FCA must be satisfied that it is impracticable (rather than merely difficult) to comply with the requirements. The test for granting a direction is that the FCA believes that to do so would not prejudice the interests of debtors or hirers. The nature of the waiver or variation will depend on individual circumstances. The FCA may make the direction subject to such conditions as it may specify.</p> <p>Who can apply? Any consumer hire business, and some consumer credit businesses, can apply for a direction. The business must hold a valid consumer credit licence permitting that business to enter into the types of agreements in question – we cannot process applications for directions before a licence has been granted.</p> <p>Please seek independent legal advice if you are unsure about whether to apply or whether your agreements are eligible for being considered for a direction.</p> <p>Which agreements are eligible for consideration for a direction? Only certain agreements that are regulated by the Act may be considered for a direction.</p> <p>An application may be made under section 60(3) only if it relates to:</p> <ul style="list-style-type: none">• a consumer credit agreement secured on land• a consumer credit agreement under which a person takes an article in pawn

- a consumer credit agreement under which the creditor provides the debtor with credit which exceeds £60,260
- a consumer credit agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him, or
- a consumer hire agreement.

Directions only apply to the agreements specified and cannot be used in connection with any other agreements. **Directions do not apply retrospectively.**

It is for you to satisfy yourself that your agreements comply with the Act and Regulations other than the parts for which you are applying to waive or vary. **If agreements are not compliant with the Regulations other than as waived or varied, any directions issued will be of no effect.**

Data protection

For the purposes of complying with the Data Protection Act, the personal information in this form will be used by the *FCA* to discharge its functions under the consumer Credit Act 1974, the Financial Services and Markets Act 2000 and other relevant legislation. It will not be disclosed for any other purposes without the permission of the applicant.

Can someone else fill in this form for me?

Yes, you can ask someone else to fill in this form and sign the declaration for you.

The individual who signs the form is responsible for making sure it is accurate and complete. Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (section 398 of the Financial Services and Markets Act 2000).

Contents of the form

The contents of the form are as follows:

- Part I**
- Section A: Applicant's details
 - Section B: Description of the agreement for which a direction is sought
 - Section C: Agreement to which the direction will apply
 - Section D: Reasons for the application for a direction
- Part II** Declaration

Part I: Information to support an application for a Direction

We need the information we ask for in the following sections to help us decide whether or not to issue a direction. If you do not provide the information required, the FCA may have to ask for this and your application will be delayed. Please continue your answers on a separate

sheet of paper where necessary.

Section A: Applicant's details

1. Name of the business seeking a direction

--

2. Main place of business in the UK

--

3. Firm reference number

--

4. Please tick which type of activity the agreements will relate to:

Consumer credit Consumer

5. Details of contact for the purposes of this application

Title		Surname		Name	
-------	--	---------	--	------	--

Your contact telephone number and email address

Tel:		Email:	
------	--	--------	--

6. Your position in relation with the business (eg, sole trader, director, partner, lawyer)

--

7. Authority for acting on the applicant's behalf where you are not the applicant (attach document)

--

8. Correspondence address (where different from above)

--

--

Section D: Reasons for the application for a direction

1. Please specify the requirement(s) of the Regulations with which it would be impracticable for you to comply, the reasons why it would be impracticable for you to comply, whether you are applying for a waiver or variation, the nature of the variation you are seeking (where applicable), whether the information excluded from the agreement will be given to the debtor/hirer at a later date and if so, when and how, and if not, why not.

For paragraph and Schedule numbers see the Consumer Credit (Agreements) Regulations 1983 as amended and the Consumer Credit (Agreements) Regulations 2010.

Please complete for each requirement:

Paragraph and Schedule number(s)	
Reasons for impracticability	

Please indicate if you are requesting a waiver or a variation

Nature of variation (where applicable)	
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, when will this be provided?	

How will this be provided?		
Paragraph and Schedule number(s)		
Reasons for impracticability		
Please indicate if you are requesting a waiver <input type="checkbox"/>		or a variation <input type="checkbox"/>
Nature of variation (where applicable)		
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, when will this be provided?		
How will this be provided?		
Paragraph and Schedule number(s)		
Reasons for impracticability		
Please indicate if you are requesting a waiver <input type="checkbox"/>		or a variation <input type="checkbox"/>
Nature of variation (where applicable)		
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, when will this be provided?		

How will this be provided?		
<hr/>		
Paragraph and Schedule number(s)		
Reasons for impracticability		
Please indicate if you are requesting a waiver <input type="checkbox"/> or a variation <input type="checkbox"/>		
Nature of variation (where applicable)		
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, when will this be provided?		
How will this be provided?		
<hr/>		
Paragraph and Schedule number(s)		
Reasons for impracticability		
Please indicate if you are requesting a waiver <input type="checkbox"/> or a variation <input type="checkbox"/>		
Nature of variation (where applicable)		
Will the information excluded from the agreement be given to the debtor/hirer at a later date?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, when will this be provided?		

How will this be provided?	

2. Please give below the details of any information you will be providing to the borrower before the agreement is concluded (for example, buyer illustration, marketing material describing the features of credit being provided, etc).

Part II: All applicants

Warning

Knowingly or recklessly giving the *FCA* information, which is false or misleading in a material particular, may be a criminal offence (section 398 of the Financial Services and Markets Act 2000). *SUP* 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Declaration

By submitting this application form:

- I/we confirm that this information is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the *FCA* information that is false or misleading in a material particular.
- I/we will notify the *FCA* immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.

Name	
Signature	
Date	
APPLICANT:	
I have authority to sign this application by virtue of (state position or authority)	
Signature:	

What to do next:

- Check that you have filled in the form correctly and answered all relevant questions and attached all the documents.

Please return the form and any attachments via email to the Central Waivers Team at the FCA:

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

What happens next?

- We will confirm receipt of your application.
- We may write to you to ask for more information.
- We will confirm our decision in writing.

Any queries?

If you have any queries regarding the progress of your application please send an email to: centralwaiversteam@fca.org.uk

8A Annex 2D Application form for a direction under section 101(8) of the CCA

Consumer Credit Act 1974

Application for a
Direction under section 101(8)

(A direction that the hirer's rights to terminate a hire agreement do not apply to a trader's consumer hire agreement)

This is the application form for a direction under section 101(8) of the Consumer Credit Act 1974.

WARNING

Knowingly or recklessly giving the *FCA* information, which is false or misleading in a material particular, may be a criminal offence (section 398 of the Financial Services and Markets Act 2000). *SUP* 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Please return the form and any attachments via email to the Central Waivers Team at the FCA:

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

Consumer Credit Act 1974

Application for a direction under section 101(8)

I hereby apply for a direction that the hirer's rights to terminate a hire agreement do not apply to those agreements listed in this application.

Declaration

By submitting this application form:

- I/we confirm that this information is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the *FCA* information that is false or misleading in a material particular.
- I/we will notify the *FCA* immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.

<p>Signature:</p>	<p>4. Describe the agreement or class of agreements for which a direction is sought and attach a copy of each agreement. (Any direction given will apply only to the agreements described.) If necessary, give answers on a separate sheet quoting this question number.</p>
<p>Date:</p>	
<p>Name in BLOCK LETTERS of person signing:</p>	
<p>Address:</p>	
<p>I have authority to sign this application by virtue of (state position or authority):</p>	

1. Give full name of person (the applicant) for whom a direction is required, ie, the name of the individual, partnership, company etc.	
2. Give full address of the principle place of business in the United Kingdom of the applicant	
3. Give firm reference number	

8A Annex 3D Information form in support of an application for a direction under section 101(8) of the CCA

Consumer Credit Act 1974 Information in support of an application for a direction under section 101(8)
<p>This is the form required to provide information in support of an application for a direction under section 101(8). The Financial Conduct Authority (FCA) needs this information to reach a decision. Further information may be required in some cases.</p> <p>WARNING</p> <p>Knowingly or recklessly giving the <i>FCA</i> information, which is false or misleading in a material particular, may be a criminal offence (section 398 of the Financial Services and Markets Act 2000). <i>SUP</i> 15.6.4R requires an authorised person to take reasonable steps to ensure the</p>

accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Please return the form and any attachments via email to the Central Waivers Team at the FCA:

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

1. For each agreement listed on the application form, give full details of:

a the goods, or type of goods, you hire out:

b the period for which they are normally hired out

2. For **each** agreement or class of hire agreement, please set out the reasons why you consider that you should be given a direction. If necessary, answer on a separate sheet quoting this question number.

<p>c the period of notice normally required for cancellation and the cancellation fees required (if any):</p>	
<p>d the cash price of the goods hired out (or typical cash prices of the type of goods hired out):</p>	
<p>e hire charges (or typical charges over the normal): hire period</p>	
<p>f the potential second-hand or recoverable value of the goods or type of goods at 18 months intervals up to the end of the normal period of hire:</p>	
<p>3 For each agreement or class of hire agreements, please set out the reasons why you consider that it would be in the interest of hirers that you should be given a direction. If necessary answer on a separate sheet, quoting this</p>	<p>4 If your reasons are based on financial considerations, please give the following information:</p> <p>a an analysis of costs involved in previous similar transactions.</p>

question number	<p>b an analysis of costs you would expect to incur in future transactions if you were not given a direction. Answer on a separate sheet, quoting this question number.</p> <p>Both these analyses should be confirmed as reasonable by an independent qualified accountant or auditor using the form below.</p> <p>Declaration</p> <p>By submitting this application form:</p>
	<ul style="list-style-type: none"> • I/we confirm that this information is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
	<ul style="list-style-type: none"> • I am/we are aware that it is a criminal offence knowingly or recklessly to give the <i>FCA</i> information that is false or misleading in a material particular.
	<ul style="list-style-type: none"> • I/we will notify the <i>FCA</i> immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.
	Signature
	Name in BLOCK LETTERS of individual signing
	Position or authority

	Telephone number
	Date
Report of independent accountant or auditor	
Regarding application by:	<ul style="list-style-type: none"> I/We* have the following additional comments
<ul style="list-style-type: none"> I/We* have examined the record on which the analyses of previous and expected future costs are based. I/We* have received satisfactory answers to my/our questions. I/We* have carried out such tests as considered necessary. <p>I/We* consider the analyses to be reasonable.</p> <p>(*delete if not applicable)</p>	
	<p>WARNING</p> <p>Knowingly or recklessly giving the <i>FCA</i> information, which is false or misleading in a material particular, may be a criminal offence (sections 398 of the Financial Services and Markets Act 2000).</p>
	Signature

	Address
	Telephone no.
	Date

Amend the following as shown

10A FCA Approved Persons

10A.1 Application

...

Appointed representatives

...

10A.1.16 R (1) ...

(2) The conditions are that:

(a) the scope of appointment of the *appointed representative* includes *insurance mediation activity* in relation to *non-investment insurance contracts* or *credit-related regulated activity*, but no other *regulated activity*; and

(b) ...

10A.1.16A R This chapter applies to an *appointed representative* that has a *limited permission* to carry on a *regulated activity* prescribed for the purposes of section 39(1E)(a) of the *Act* as follows:

(1) *FCA controlled functions* apply to the *appointed representative* as set out in *SUP 10A.1.15R* and *SUP 10A.1.16R* in relation to the carrying on of the *regulated activity*, for which it does not have *permission*, comprised in the business for which its *principal* has accepted responsibility;

(2) (a) unless it is a *not-for-profit debt advice body*, the *apportionment and oversight function* applies in relation to the carrying on of the *regulated activity* for which it has *limited permission*;

(b) if it is a *not-for-profit debt advice body* and a *CASS large debt management firm*, the *CASS operational oversight function* applies in relation to the carrying on of *debt management activity*.

...

Credit firms with limited permission

10A.1.25 R (1) Subject to (2) and (3), this chapter, except in respect of the *apportionment and oversight function*, does not apply to a *firm* that has *limited permission* in relation to the carrying on of the

relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has *limited permission*.

(2) Subject to (3), this chapter does not apply to a *not-for-profit debt advice body*.

(3) This chapter applies to a *not-for-profit debt advice body* that is a *CASS large debt management firm* with respect to the *CASS operational oversight function* only.

...

10A.7 FCA required functions

...

Compliance oversight function (CF 10)

10A.7.8 R The *compliance oversight function* is the function of acting in the capacity of:

(1) a *director* or *senior manager* who is allocated the function set out in SYSC 3.2.8R, ~~or~~ SYSC 6.1.4R(2) or SYSC 6.1.4CR; or

...

CASS operational oversight function (CF10a)

10A.7.9 R In relation to a *CASS medium firm* and a *CASS large firm* (other than a *CASS large debt management firm*), the *CASS operational oversight function* is the function of acting in the capacity of a *person* to whom is allocated the function set out in CASS 1A.3.1AR.

10A.7.9A R In relation to a *CASS large debt management firm*, the *CASS operational oversight function* is the function of acting in the capacity of a *person* to whom is allocated the function in CASS 11.3.4R.

...

10A.9 Significant management functions

...

Significant management function (CF29)

10A.9.9 R The *significant management function* is the function of acting as a *senior manager* with significant responsibility for a significant business unit that:

...

(2A) carries on credit-related regulated activity;

...

...

10A.10 Customer-dealing functions

...

10A.10.3 G The *customer function* has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; it has no application to banking business such as deposit taking and lending, nor to general insurance business or credit-related regulated activity.

...

10A.16 How to apply for approval and give notifications

...

10A.16.1 D ...

(2) ~~A~~ Subject to (2A), an application by a *firm* other than a *credit union* must be made by submitting the Form online at fca.org.uk using the form specified on the *FCA's* and *PRA's* ONA system.

(2A) An application by a *firm* whose application for *permission* or whose *Part 4A permission* covers only *credit-related regulated activities* must be made using the form in *SUP 10A Annex 4D* or *SUP 10A Annex 8D* and must be submitted in the way set out in *SUP 15.7.4R* to *SUP 15.7.9G* (Form and method of notification).

...

...

11 Controllers and close links

11.1 Application

...

11.1.2 R Table Applicable sections (see *SUP 11.1.1R*)

	Category of firm	Applicable sections

(1)	A <i>UK domestic firm</i> other than a <i>building society</i> , a non-directive friendly society, or a <i>non-directive firm</i> or (in the case of an <u>FCA-<i>authorised person</i></u>) a <u><i>firm with only a limited permission</i></u>	All except <i>SUP 11.3</i> , <i>SUP 11.4.2AR</i> and <i>SUP 11.4.4R</i>
...		
(2B)	(In the case of an <u>FCA-<i>authorised person</i></u>) a <u><i>firm with only a limited permission</i></u>	<u>All except <i>SUP 11.3</i>, <i>SUP 11.4.2R</i>, and <i>SUP 11.4.4R</i></u>
...		

...

11.3 Requirements on controllers or proposed controllers under the Act

...

11.3.2A G The Treasury have made the following exemptions from the obligations under section 178 of the *Act*:

...

(3) potential controllers of non-directive firms (other than, in the case of an FCA-*authorised person*, firms with only a limited permission) ("A") are exempt from the obligation to notify a change in *control* unless the change results in the potential *controller* holding:

...

(4) (in the case of a change in *control* over an FCA-*authorised person*) potential controllers of firms with only a limited permission ("A") are exempt from the obligation to notify a change in *control*, unless the change would result in the potential *controller* holding:

(a) 33% or more of the shares in A or in a parent undertaking of A ("P"); or

(b) 33% or more of the voting power in A or P; or

(c) shares or voting power in A or P as a result of which the controller is able to exercise significant influence over the management of A;

or where the change in control over A would lead to the controller ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).

...

11.4 Requirements on firms

...

11.4.2A R *A non-directive firm (including, in the case of an FCA-authorised person, a firm with only a limited permission) must notify the appropriate regulator of any of the following events concerning the firm:*

...

...

11.4.7 R The notification by a firm under SUP 11.4.2R, SUP 11.4.2AR or SUP 11.4.4R must:

...

...

11.6 Subsequent notification requirements by firms

Changes in the information provided to the appropriate regulator

11.6.1 G *Firms are reminded that SUP 15.6.4R requires them to notify the appropriate regulator if information notified under SUP 11.4.2R, SUP 11.4.2AR or SUP 11.4.4R was false, misleading, inaccurate, incomplete, or changes, in a material particular. This would include a firm becoming aware of information that it would have been required to provide under SUP 11.5.1R if it had been aware of it.*

...

11 Annex 1 G Summary of notifications required in this chapter

References in this annex to a “firm with only a limited permission” are to an FCA-authorised person only.

Event triggering a notification	Requirement	Reference
---------------------------------	-------------	-----------

	When	How
<p>Notifications from a <i>controller</i> or proposed <i>controller</i> of a <i>UK domestic firm</i> other than a <i>non-directive firm</i> or a <i>firm with only a limited permission</i>)</p> <p>...</p>		
<p>Notifications from a <i>controller</i> or potential <i>controller</i> of a <i>non-directive firm</i> other than a <i>firm with only a limited permission</i></p>		
<p>1. When a potential <i>controller</i> of a <i>non-directive firm</i> other than a <i>firm with only a limited permission</i> (“A”) decides to acquire (a) 20% or more of the <i>shares</i> in A or in a <i>parent undertaking</i> of A (“P”); (b) 20% or more of the <i>voting power</i> in A or P; or (c) <i>shares</i> or <i>voting power</i> in A or P as a result of which the potential <i>controller</i> will be able to exercise significant influence over the management of A</p>	<p><i>SUP</i> 11.3.2AG(3)</p>	<p><i>SUP</i> 11.3.7D to <i>SUP</i> 11.3.14G</p>
<p>...</p>		
<p><u>Notifications from a <i>controller</i> or potential <i>controller</i> of a <i>firm with only a limited permission</i></u></p>		
<p>1. <u>When a potential <i>controller</i> of a <i>firm with only a limited permission</i> (“A”) decides to acquire (a) 33% or more of the <i>shares</i> in A or in a <i>parent undertaking</i> of A (“P”); (b) 33% or more of the <i>voting power</i> in A or P; or (c) <i>shares</i> or <i>voting power</i> in A or P as a result of which the potential <i>controller</i> will be able to exercise significant influence over the management of A</u></p>	<p><u><i>SUP</i></u> <u>11.3.2AG(4)</u></p>	<p><u><i>SUP</i></u> <u>11.3.7D</u> to <u><i>SUP</i></u> <u>11.3.14G</u></p>
<p>2. <u>When an existing <i>controller</i> decides to reduce <i>control</i> over A in a manner which will result in the <i>controller</i> failing to fall in any of the cases described in 1 above</u></p>	<p><u><i>SUP</i></u> <u>11.3.2AG(4)</u></p>	<p><u><i>SUP</i></u> <u>11.3.15AD</u></p>

Notifications from a UK domestic firm other than a non-directive firm (or a firm with only a limited permission) relating to a change in control

...

- | | | | |
|----|--|--------------------|-----------------|
| 3. | When a <i>firm</i> becomes aware of any material inaccuracies, omissions or changes in information previously provided to the <i>FSA appropriate regulator</i> either by the <i>firm</i> or by the <i>controller</i> | <i>SUP</i> 11.6.1G | <i>SUP</i> 15.7 |
| | | <i>SUP</i> 11.6.2R | |

...

Notification from a non-directive firm relating to a change in control other than a firm with only a limited permission

...

- | | | | |
|----|---|--------------------|-----------------|
| 3. | When a <i>firm</i> becomes aware of any material inaccuracies omissions or changes in information previously provided to the <i>FSA appropriate regulator</i> either by the <i>firm</i> or by the <i>controller</i> | <i>SUP</i> 11.6.1G | <i>SUP</i> 15.7 |
| | | <i>SUP</i> 11.6.2R | |

...

Notification from a firm with only a limited permission relating to a change in control

- | | | | |
|----|--|---------------------------------------|---------------------------|
| 1. | <u>When a <i>firm</i> becomes aware that a <i>person</i> (“A”) is acquiring (a) 33% or more of the <i>shares in the firm</i> (“B”) or in a <i>parent undertaking</i> of B (“P”); (b) 33% or more of the <i>voting power</i> in B or P; or (c) <i>shares</i> or <i>voting power</i> in B or P as a result of which the <i>controller</i> is able to exercise significant influence over the management of B</u> | <u><i>SUP</i> 11.4.2</u>
<u>AR</u> | <u><i>SUP</i> 11.5.1R</u> |
| | | <u><i>SUP</i> 11.4.7R</u> | <u><i>SUP</i> 11.5.2R</u> |
| | | <u><i>SUP</i> 11.4.8G</u> | |
| 2. | <u>When a <i>firm</i> becomes aware that A is ceasing to fall in any of the cases described in 1 above</u> | <u><i>SUP</i> 11.4.2</u>
<u>AR</u> | <u><i>SUP</i> 11.5.7R</u> |
| | | <u><i>SUP</i> 11.4.7R</u> | <u><i>SUP</i> 15.7</u> |
| | | <u><i>SUP</i> 11.4.8G</u> | |

- | | | | |
|----|--|--------------------|-----------------|
| 3. | <u>When a <i>firm</i> becomes aware of any material inaccuracies omissions or changes in information previously provided to the <i>appropriate regulator</i> either by the <i>firm</i> or by the <i>controller</i></u> | <u>SUP 11.6.1G</u> | <u>SUP 15.7</u> |
| | | <u>SUP 11.6.2R</u> | |
| 4. | <u>When a change in <i>control</i> actually takes place or, although a notification has been submitted, is not, after all, going to take place</u> | <u>SUP 11.6.4R</u> | <u>SUP 15.7</u> |
| | | <u>SUP 11.6.5R</u> | |

Notifications from an *overseas firm* relating to a change in *control*

...

- | | | | |
|----|---|--------------------|-----------------|
| 2. | When a <i>firm</i> becomes aware of any material inaccuracies, omissions or changes in information previously provided to the <i>FSA appropriate regulator</i> by the <i>firm</i> | <u>SUP 11.6.1G</u> | <u>SUP 15.7</u> |
|----|---|--------------------|-----------------|

...

12 Appointed representatives

...

12.2 Introduction

...

- 12.2.2 G (1) A person (other than a *firm* with only a *limited permission*) must satisfy the conditions in section 39(1) of the *Act* to become an *appointed representative*. These are that:

...

Appointed representatives with limited permission to carry on certain credit activities

- 12.2.2A G (1) Under sections 20(1) and (1A) of the Act (Authorised persons acting without permission), if an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with his permission, he is to be taken to have contravened a requirement imposed by the FCA (in the case of a FCA-authorized person) or the FCA and the PRA (in the case of a PRA-authorized person).
- (2) In addition, under section 23(1A) of the Act (Contravention of the general prohibition or section 20(1) or (1A)), an authorised person is guilty of an offence if he carries on a credit-related regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with his permission. For these purposes, entering into a regulated credit agreement as lender, exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement and debt collecting are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the borrower to repay is secured on land (see the Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2014).
- (3) Section 39(1D) of the Act provides, however, that sections 20(1) and (1A) and 23(1A) of the Act do not apply:
- (a) to an authorised person with only a limited permission;
- (b) in relation to the carrying on by him of a regulated activity which is not one to which his limited permission relates;
- if the conditions in section 39(1C) of the Act are met. Guidance on these conditions is given at SUP 12.2.2BG. A firm carrying on a regulated activity in circumstances where, as a result of section 39(1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply is also referred to as an appointed representative.
- 12.2.2B G (1) A firm must satisfy the conditions in section 39(1C) of the Act to become an appointed representative. These are that:
- (a) the firm must have only a limited permission (section 39(1C)(a) of the Act);
- (b) the firm must have entered into a contract with another authorised person, referred to in the Act as the 'principal', which:
- (i) permits or requires him to carry on business of a description prescribed in the Appointed Representatives Regulations (section 39(1C)(b)(i) of the Act) (see SUP

12.2.7G); and

(ii) complies with any requirements that may be prescribed in the *Appointed Representatives Regulations* (section 39(1C)(b)(ii) of the *Act*); and

(c) the *principal* must have accepted responsibility, in writing, for the authorised activities of the *firm* in carrying on the whole, or part, of the business specified in the contract.

(2) The *appointed representative* is not subject to sections 20(1) or (1A) or 23(1A) of the *Act* in relation to the carrying on of the *regulated activity* which is comprised in the business for which his *principal* has accepted responsibility and for which he does not have *limited permission*.

Who can be an appointed representative?

12.2.3 G As long as the conditions in section 39 of the *Act* are satisfied, any *person*, other than an *authorised person* (unless he has only a *limited permission*), may become an *appointed representative*, including a *body corporate*, a *partnership* or an individual in business on his own account. However, an *appointed representative* cannot be an *authorised person* under the *Act* unless he has only a *limited permission*.; that is, it A *person* cannot be exempt for some *regulated activities* and *authorised* for others. An *appointed representative* with a *limited permission* is not an *exempt person*, but he may carry on the *regulated activity* comprised in the business for which his *principal* has accepted responsibility without being taken to have contravened a requirement imposed on him by the *FCA* or *PRA* or committing an offence, even though the activity is not covered by his *limited permission*.

...

12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 39(1), (1C) and (1E) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the *Act* may not apply, which is business which comprises any of:

...

(ea) *credit broking* (article 36A of the *Regulated Activities Order*);

(eb) *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*);

(f) ...

- (fa) debt adjusting (article 39D of the *Regulated Activities Order*);
- (fb) debt counselling (article 39E of the *Regulated Activities Order*);
- (fc) debt collecting (article 39F of the *Regulated Activities Order*);
- (fd) debt administration (article 39G of the *Regulated Activities Order*);
- ...
- (j) advising on a home finance transaction (articles 53A, 53B and 53C of the *Regulated Activities Order*); ~~and~~
- (ja) entering into a regulated credit agreement as lender or exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (article 60B of the *Regulated Activities Order*) when carried on in relation to a credit agreement under which the credit is provided free of interest and without any other charges;
- (jb) entering into a regulated consumer hire agreement as owner or exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement (article 60N of the *Regulated Activities Order*);
- (k) agreeing to carry on a regulated activity (article 64 of the *Regulated Activities Order*) where the regulated activity is one of those in (a) to (h) or (ja) or (jb); and
- (l) providing credit information services (article 89A of the *Regulated Activities Order*).

...

12.3 What responsibility does a firm have for its appointed representatives or EEA tied agent?

...

- 12.3.4 G *SYSC 6.1.1R* requires a MiFID investment firm and a credit firm to ensure the compliance of its *appointed representative* with obligations under the *regulatory system*. The concept of a *relevant person* in *SYSC* includes an officer or employee of a *tied agent*.

...

12.5 Contracts: required terms

...

12.5.2 G ...

(2) Under the *Appointed Representative Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:

...

(g) ...;

(h) effects introductions (within article 36A (Credit broking) of the *Regulated Activities Order*) of individuals to other counterparties;

(i) facilitates persons becoming the lender and borrower under an article 36H agreement (within the meaning of the *Regulated Activities Order*) on behalf of other counterparties;

(j) carries on any of the other activities specified in article 36H(3) of the *Regulated Activities Order* on behalf of other counterparties in the course of, or in connection with, facilitation mentioned in (i) by the *appointed representative* or its principal;

(k) takes steps (within article 39D (Debt adjusting) of the *Regulated Activities Order*) on behalf of other counterparties;

(l) gives advice to a borrower (within article 39E (Debt-counselling) of the *Regulated Activities Order*) on behalf of other counterparties;

(m) takes steps (within article 39F (Debt-collecting) of the *Regulated Activities Order*) to procure the payment of debts on behalf of other counterparties;

(n) performs duties (within article 39G (Debt administration) of the *Regulated Activities Order*) under, or exercises or enforces rights under, an agreement on behalf of other counterparties;

(o) enters into regulated credit agreements or exercises or has the right to exercise the lender's rights and duties under such agreements (within article 60B (Regulated credit agreements) of the *Regulated Activities Order*) on behalf of other counterparties;

- (p) enters into regulated consumer hire agreements or exercises, or has the right to exercise, the owner's rights and duties under such agreements (within article 60N (Regulated consumer hire agreements) of the Regulated Activities Order) on behalf of other counterparties;
- (q) takes steps on behalf of, or gives advice to, an individual in relation to the taking of any steps (in circumstances constituting the carrying on of providing credit information services) on behalf of other counterparties.

...

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

- 12.6.6 R A firm must take reasonable steps to ensure that each of its *appointed representatives*:
- (1) does not carry on *regulated activities* in breach of the *general prohibition* in section 19 of the *Act* or (if the *appointed representative* is a firm with a *limited permission*) in breach of section 20(1) or (1A) of the Act; and
 - (2) carries on the *regulated activities* for which the firm has accepted responsibility in a way which is, and is held out as being, clearly distinct from any of the *appointed representative's* other business:
 - (a) which is performed as an *appointed representative* of another firm or in accordance with a *limited permission*; or

...

...

- 12.6.8 G (1) Some of the *controlled functions*, as set out in SUP 10A.4.1R, apply to an *appointed representative* of a firm, other than an *introducer appointed representative*, just as they apply to a firm (see SUP 10A.1.15R). These are the *governing functions* and the *customer function*. In the case of an appointed representative that also has a limited permission, an FCA required function may apply to it. As explained in SUP 10A.1.16R and SUP 10A.3.2G respectively:
- (b) although the *customer function* applies to an *appointed representative*, the descriptions of the functions themselves

...

do not extend to *home finance mediation activity*, ~~or~~ *insurance mediation activity* or *credit-related regulated activity*; and

(ba) if an appointed representative also has a limited permission:

(i) the apportionment and oversight function applies to it in relation to the carrying on of the regulated activity for which it has limited permission, unless it is a not-for-profit debt advice body;

(ii) if it is a not-for-profit debt advice body and a CASS large debt management firm, the CASS operational oversight function applies in relation to the carrying on of debt management activity; and

(c) ...

(2) The *approved persons* regime applies differently to an *appointed representative* whose scope of appointment includes *insurance mediation activity* in relation to *non-investment insurance contracts* or *credit-related regulated activity* but no other *regulated activity* and whose principal purpose is to carry on activities other than *regulated activities*. These appointed representatives need only one person performing one of the *governing functions*. This means that only one *director* (or equivalent) of these appointed representatives must be approved under section 59 of the *Act* for the performance of the *director function*, the *chief executive function*, the *partner function* or the *director of unincorporated association function*, whichever is the most appropriate (see SUP 10A.1.16R).

...

12.7 Notification requirements

...

12.7.1A R (1) A *firm* other than;

(a) a credit union; or

(b) a firm which intends to appoint, or has appointed, an appointed representative to carry on only credit-related regulated activity;

must submit the form in SUP 12 Annex 3R online at <http://www.fca.org.uk> using the FCA's ONA system.

(2) A credit union or a firm which intends to appoint, or has appointed, an appointed representative to carry on only credit-related regulated activity must submit the form in SUP 12 Annex 3R in the way set

out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

...

12.7.8A R (1) A Subject to (2A), a firm other than a *credit union* must submit the form as set out in SUP 12 Annex 4R online at <http://www.fca.org.uk> using the FCA's ONA system.

(2) ...

(2A) If the notification:

(a) relates to an appointed representative whose scope of appointment covers only credit-related regulated activity;
or

(b) is of a change to the scope of appointment of an appointed representative to add or remove credit-related regulated activity;

the firm must submit the form in SUP 12 Annex 4R in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

...

12.8 Termination of a relationship with an appointed representative or EEA tied agent

...

12.8.1A R (1) A Subject to (2A), a firm other than a *credit union* must submit any notification under SUP 12.8.1R(1) in the form set out in SUP 12 Annex 5R, online at ~~www.fsa.gov.uk~~ www.fca.org.uk using the FCA's ONA system.

(2) ...

(2A) A firm must submit any notification under SUP 12.8.1R(1) that relates to an appointed representative whose scope of appointment covers only credit-related regulated activity in the form set out in SUP 12 Annex 5R and in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

(3) ...

...

12 Annex 3R Appointed representative appointment form

...

13 ...

14 Will the appointed representative undertake credit-related regulated activities? † §

...

12 Annex 4R Appointed representative notification form

13 ...

Yes No

13A Does the appointed representative undertake credit-related regulated activities?

Do you wish to change this? If “Yes”, please provide details below: †

...

13A Qualifying for authorisation under the Act

...

13A.6 Which rules will an incoming EEA firm be subject to?

...

13A.6.2 G An *incoming EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation* and only provides services in the *United Kingdom*) or *incoming Treaty firm* carrying on business in the *United Kingdom* must comply with the *applicable provisions* (see SUP 13A.4.4G, SUP 13A.4.6G and SUP 13A.5.4G) and other relevant *UK legislation*. For example where the business includes:

- (1) business covered by the Consumer Credit Act 1974, then an *incoming EEA firm* or *incoming Treaty firm* must comply with the provisions of that Act, as modified by paragraph 15(3) of

Schedule 3 to the Act; or

...

...

13A Annex 1G Application of the Handbook to Incoming EEA firms

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>REC</i>
<i>CONC</i> [FCA]	<u>CONC applies except to the extent necessary to be compatible with European law.</u> <u>Provisions on the territorial application of CONC are contained in CONC 1.2.5R and CONC 1.2.6R</u>	<u>As column (2).</u>
<i>LR</i>	...	

15.3 General notification requirements

...

Breaches of rules and other requirements in or under the Act or the CCA

- 15.3.11 R (1) A firm must notify the appropriate regulator of:
- (a) ...
 - (aa) a significant breach of any requirement imposed by the CCA or by regulations or an order made under the CCA (except if the breach is an offence, in which case (c) applies), but any notification under (aa) is required to be made only to the FCA; or
 - (b) ...
 - (c) the bringing of a prosecution for, or a conviction of, any

offence under the Act or the CCA; or

...

...

...

- 15.3.12 G In *SUP* 15.3.11R(1)(a) or (1)(aa), significance should be determined having regard to potential financial losses to *customers* or to the *firm*, frequency of the breach, implications for the *firm's* systems and controls and if there were delays in identifying or rectifying the breach

...

15.5 Core information requirements

...

- 15.5.9 R (1) A *firm* other than:
- (a) a *credit union*; or
 - (b) an FCA-*authorised person* with *permission* to carry on only *credit-related regulated activity*;

must submit any notice under *SUP* 15.5.1R, *SUP* 15.5.4R and *SUP* 15.5.5R by submitting the form in *SUP* 15 Ann 3R online at the *appropriate regulator's* website.

- (2) A *credit union* or an FCA-*authorised person* with *permission* to carry on only *credit-related regulated activity* (other than a *firm* with only an *interim permission* to which the modifications to *SUP* 15 in *CONC* 12 apply) must submit any notice under *SUP* 15.5.1R, *SUP* 15.5.4R, *SUP* 15.5.5R and *SUP* 15.5.7R by submitting the form in *SUP* 15 Ann 3R in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).

...

...

16 Reporting requirements

16.1 Application

...

- 16.1.3 R Application of different sections of *SUP* 16 (excluding *SUP* 16.13, *SUP*
-

16.15, SUP 16.16 and SUP 16.17)

(1) Section(s)	(2) Categories of firm to which section applies		(3) Applicable rules and guidance
...			
SUP 16.4 and SUP 16.5	All categories of <i>firm</i> except:		Entire sections
...			
	(j)	a <i>firm</i> with <i>permission</i> to carry on only <i>insurance mediation activity</i> , <i>home finance mediation activity</i> , or both;	
	(ja)	an <i>FCA-authorised person</i> with <i>permission</i> to carry on <u>only credit-related regulated activity</u> ;	
	(k)	a <i>firm</i> falling within a <u>combination of both (i), and (j) and (ja)</u> .	
...			
SUP 16.11	A <i>firm</i> , other than a <i>managing agent</i> , which is:		Entire section
...			
	(4)	a <i>person</i> who issues or manages the relevant assets of the issuer of a <i>structured capital-at-risk product</i> ; <u>or</u>	
	(5)	a <i>firm</i> with <i>permission</i> to <u>enter into a regulated credit agreement as lender in respect of high-cost short-term credit or home credit loan agreements</u> .	

16.10 Verification of standing data

...

- 16.10.4A R (1) A *firm* other than:
- (a) a *credit union*; or
 - (b) an FCA-*authorised person with permission to carry on only credit-related regulated activity*;

must submit any corrected *standing data* under SUP 16.10.4R(3) online at the *appropriate regulator's* website using the ONA system.

- (2) A *credit union* or a *firm with permission to carry on only credit-related regulated activity* must submit any corrected *standing data* under SUP 16.10.4R(3) to static.data@fca.org.uk or via post or hand delivery to the FCA marked for the attention of the 'Static Data team'.

...

16.11 Product Sales Data Reporting

Application

- 16.11.1 R This section applies to a firm which is a *home finance provider* or a *firm with permission to enter into a regulated credit agreement as lender in respect of high-cost short-term credit or home credit loan agreements*, or in respect of sales to a *retail client* or a *consumer*:

...

...

- 16.11.2 G (1) The purpose of this section is to set out the requirements for *firms* in the retail mortgage, investment, *consumer credit lending* and *pure protection contract* markets specified in SUP 16.11.1R to report individual product sales data to the FCA. In the case of *firms* in the sale and rent back market, there is a requirement to record, but not to submit, the data. These requirements apply whether the regulated activity has been carried out by the *firm*, or through an intermediary which has dealt directly with the *firm*.

...

...

- 16.11.5 R The data must contain sales data in respect of the following products:

...

- (5) *home reversion plans*; ~~and~~

- (6) *regulated sale and rent back agreements*;
- (7) *High-cost short-term credit*; and
- (8) *home credit loan agreements*.

...

16.12 Integrated Regulatory Reporting

Application

- 16.12.1 G The effect of *SUP* 16.1.1R is that this section applies to every *firm* carrying on business set out in column (1) of *SUP* 16.12.4R except:

...

- (3) an *authorised professional firm* (other than one that must comply with *IPRU(INV)* 3, 5 or 13 in accordance with *IPRU(INV)* 2.1.4R, or that is a *CASS debt management firm*, where *SUP* 16.12.4R will apply in respect of the business the firm undertakes), which must (unless it is within (3A)) comply with *SUP* 16.12.30R and *SUP* 16.12.31R; ~~and~~

- (3A) an *authorised professional firm* if the only regulated activity it carries on is credit-related regulated activity as a non-mainstream regulated activity; and

- (4) ...

...

Reporting requirement

- 16.12.3 R (1) Any *firm* permitted to carry on any of the activities within each of the *RAGs* set out in column (1) of the table in *SUP* 16.12.4R must:

(a)

- (i) ...

- (ii) unless (iii) applies, where a *firm* is required to submit completed *data items* for more than one *RAG*, that *firm* must only submit the *data item* of the same name and purpose in respect of the lowest numbered *RAG* applicable to it, *RAG* 1 being the lowest and *RAG* ~~10~~ 12 the highest;

...

...

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/period	due date
...				
<u>RAG 12</u> [FCA]	• <u>credit-related regulated activity</u>	<u>SUP 16.12.29CR</u>	<u>SUP 16.12.29CR</u>	<u>SUP 16.12.29CR</u>

...

16.12.29A R ...

Regulated Activity Group 12

16.12.29B R SUP 16.12.29CR does not apply:

- (1) to a credit firm if the only credit-related regulated activity it carries on is providing credit references;
- (2) to a credit firm that is a not-for-profit body, unless it is a not-for-profit debt advice body;
- (3) with respect to credit-related regulated activity to the extent that it relates to credit agreements secured by a legal or equitable mortgage on land.

16.12.29C R The applicable data items, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

<u>Description of data item</u>	<u>Data item (note 1)</u>	<u>Frequency</u>		<u>Submission deadline</u>
		<u>Annual revenue from credit-related regulated activities up to and including £5 million (note 2)</u>	<u>Annual revenue from credit-related regulated activities over £5 million</u>	

<u>Financial data</u> (note 3)	<u>CCR001</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Volumes</u> (note 4)	<u>CCR002</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Lenders</u> (note 5)	<u>CCR003</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Debt management</u> (note 6)	<u>CCR004</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Client Money & Assets</u> (note 7)	<u>CCR005</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Debt collection</u> (note 8)	<u>CCR006</u>	<u>Annually</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Key data</u> (note 9)	<u>CCR007</u>	<u>Annually</u>	<u>Annually</u>	<u>30 business days</u>
<u>Note 1</u>	<u>When submitting the required data item, a firm must use the format of the data item set out in SUP 16 Annex 35AR. Guidance notes for the completion of the data items is set out in SUP 16 Annex 35BG.</u>			
<u>Note 2</u>	<u>References to revenue in SUP 16.12.29CR in relation to any firm do not include the amount of any repayment of any credit provided by that firm as lender.</u>			
<u>Note 3</u>	<p>(a) <u>Subject to (b) to (d) below, this data item applies to all credit firms.</u></p> <p>(b) <u>This data item does not apply to a firm if the only credit-related regulated activity for which it has permission is operating an electronic system in relation to lending.</u></p> <p>(c) <u>This data item does not apply to a firm required to submit a Balance Sheet, Income Statement or Capital Adequacy data item from a RAG other than RAG 12.</u></p> <p>(d) <u>This data item does not apply to a firm with limited permission unless it is a not-for-profit debt advice body and at any point in the last 12 months has held £1 million or more in client money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months.</u></p>			
<u>Note 4</u>	<p>(a) <u>Subject to (b) below, this data item applies to all credit firms.</u></p> <p>(b) <u>This data item does not apply to a firm with limited permission unless it is a not-for-profit debt advice body and at any point in the last 12 months has held £1 million or more in client money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months.</u></p>			
<u>Note 5</u>	<u>This data item applies to all firms with permission for entering into a regulated credit agreement as lender or exercising, or having the right to</u>			

	<u>exercise, the lender's rights and duties under a regulated credit agreement.</u>
<u>Note 6</u>	<p>(a) <u>Subject to (b) to (d) below, this data item applies to a debt management firm and to a not-for-profit debt advice body that at any point in the last 12 months has held £1 million or more in client money or, as the case may be, projects that it will hold £1million or more in client money in the next 12 months.</u></p> <p>(b) <u>This data item does not apply to a firm with limited permission other than a not-for-profit debt advice body within (a).</u></p> <p>(c) <u>This data item does not apply to a firm required to submit a Capital Adequacy data item from a RAG other than RAG 12, or under SUP 16.13, unless (d) applies.</u></p> <p>(d) <u>Where a firm is required to submit a Capital Adequacy data item from a RAG other than RAG 12 or under SUP 16.13 but the firm's highest capital requirement derives from its activity under RAG 12, the firm should submit both CCR004 and the Capital Adequacy data item required from the RAG other than RAG 12 or SUP 16.13.</u></p>
<u>Note 7</u>	<u>This data item applies to a CASS debt management firm.</u>
<u>Note 8</u>	<u>This data item applies to a firm with permission to carry on debt collecting or operating an electronic system in relation to lending.</u>
<u>Note 9</u>	<p>(a) <u>Subject to (b) and (c) below, this data item applies to a firm that has limited permission.</u></p> <p>(b) <u>This data item does not apply to an authorised professional firm that is a CASS debt management firm. Such a firm is instead required to submit the other data items in SUP 16.12.29CR as appropriate.</u></p> <p>(c) <u>This data item does not apply to a not-for-profit debt advice body that at any point in the last 12 months has held £1 million or more in client money or, as the case may be, projects that it will hold £1million or more in client money in the next 12 months. Such a not-for-profit debt advice body is instead required to submit data items CCR001, CCR002, CCR004 and CCR005.</u></p>

Authorised professional firms

- 16.12.30 R (1) An authorised professional firm, other than one that must comply with IPRU(INV) 3, 5 or 13 in accordance with IPRU(INV) 2.1.4R, or one that is a CASS debt management firm or one that carries on only credit-related regulated activity as a non-mainstream regulated activity, must submit an annual questionnaire, contained in SUP 16 Annex 9R, unless:

...

...

16.12.30B R An authorised professional firm that is a CASS debt management firm and is not within SUP 16.12.1G(3A) must complete the appropriate reports specified in SUP 16.12.4R and SUP 16.12.29CR.

...

16 Annex 9R

Annual Questionnaire for Authorised Professional Firms

Handbook Reference: SUP 16 Annex 9R

...

2.02 Income from mainstream regulated activities

...

<p>b During the period, please indicate the proportion of this income generated from:</p> <p>(An estimate to the nearest 10% is sufficient)</p>	i) Investment management activities	
	ii) Corporate finance activities	
	iii) Retail investment activities	
	iv) Home finance mediation activities	
	v) Insurance mediation activities	
	vi) <u>Credit-related regulated activities</u>	
	vii) Other	
	TOTAL	100%

...

16 Annex 19BG

NOTES FOR COMPLETION OF THE MORTGAGE LENDING ADMINISTRATION RETURN ('MLAR')

...

INTRODUCTION: GENERAL NOTES ON THE RETURN

...

4. Regulated mortgage contracts and the wider mortgage market

...

(ii) Residential loans to individuals

...

Examples of non-regulated mortgage contracts which fall under the wider category of residential loans to individuals include: buy-to-let loans and other types of loan where the property is not for use by the borrower (or qualifying dependants); and residential loans to individuals where the lender does not have a first charge. In the case where a lender takes a first and a second charge over the same residential property (for different purposes), we consider that generally the loan secured by the first charge will be a regulated mortgage contract, but that the loan secured by the second charge will invariably not and should be reported as non-regulated.

Pending the UK implementation of the Mortgage Credit Directive, even though loans secured by a second or subsequent charge on residential property may potentially be regulated credit agreements, firms completing the MLAR in the period after 1 April 2014 should continue to include second charge mortgage business as business falling within non-regulated mortgage contracts.

...

16
Annex
20G

Products covered by the reporting requirement in SUP 16.11

G

In the case of mortgage transactions, the reporting requirement only applies to loans for house purchase and remortgages and not to further advances. A reportable mortgage transaction applies where the mortgage transaction has completed (i.e. funds have been transferred and have been applied for the purpose of the mortgage).

In the case of *high-cost short-term credit* and *home credit loan agreements*, a reportable transaction has taken place where the loan monies have been advanced to the *borrower*.

Part 1 – Products

The following tables provide *guidance* on the products for which sales data is to be reported. These tables are not intended to be a complete list of relevant products; *firms* should report sales data on all products which would fall within the scope of *retail investments*, *pure protection contracts*, *regulated mortgage contracts*, other *home finance transactions*, *high-cost short-term credit* and *home credit loan agreements*.

...

Table 5 – SHORT TERM LOANS

Relevant loan types comprise:

High-cost short-term credit

Home credit loan agreements

Part 2: Supporting product definitions/guidance for product sales data reporting

...

Short-term loans

<u>Loan Type</u>	<u>Description</u>
<u><i>High-cost short-term credit</i></u>	Defined in the Handbook <i>Glossary</i>
<u><i>Home credit loan agreements</i></u>	Defined in the Handbook <i>Glossary</i>

...

		<u>payment</u>
<u>Rollover</u>	<u>Y = yes</u> <u>N = no</u>	<u>Indicate if the loan is rolled over from a previous loan. For this purpose, a loan is rolled over if the period over which loan repayments are to be made has been extended, or if the due date for any loan repayment has been moved to a later date, whether by means of an agreement that replaces, varies or supplements an earlier loan or otherwise (excluding any forbearance by the lender where the firm does not receive any consideration in connection with the rollover and the effect is that no interest or other charges (other than where a charge is a reasonable estimate of the cost of the additional administration required as a result of the customer having rolled over the agreement) accrue from the date of the rollover).</u>
<u>Order of rollover</u>	<u>Numeric integer</u>	<u>Indicate how many times the same original loan has been rolled over</u>
<u>Length of term</u>	<u>Numeric integer</u>	<u>Provide the length of the agreed loan period in days</u>
<u>Reason for loan</u>	<u>S = subsistence</u> <u>P = one off purchase</u> <u>O = other</u>	<u>Select only one code to indicate the reason for the loan.</u>
<u>Date of birth of borrower</u>	<u>DD/MM/YYYY</u> <u>Y</u>	
<u>Post code of borrower</u>	<u>e.g. XY45</u> <u>6XX</u>	<u>Provide the post code of the main place of residence of the borrower</u>
<u>Monthly income of borrower</u>	<u>Numeric £</u>	<u>Provide monthly income after tax of borrower</u>
<u>Marital status of borrower</u>	<u>M = married</u> <u>S = single</u> <u>D = divorced</u>	<u>Select only one code that most appropriately represents the borrower's marital status</u>

		<u>W = widowed</u> <u>L = living together</u> <u>P = separated</u> <u>O = other</u>	
	<u>Residential status of borrower</u>	<u>O = owner occupier</u> <u>L = living with parents</u> <u>T = tenant</u> <u>C = council tenant</u> <u>J = joint owner</u> <u>X = other</u>	<u>Select only one code that most appropriately represents the borrower's residential status</u>
	<u>Employment status of borrower</u>	<u>EF = employed full time</u> <u>EP = employed part time</u> <u>ET = employed temporary</u> <u>SE = self-employed</u> <u>S = student</u> <u>HM = home maker</u> <u>U = unemployed</u> <u>OB = on benefits</u> <u>AF = in armed forces</u> <u>R = retired</u>	<u>Select only one code that most appropriately represents the borrower's employment status</u>
		...	

Insert the following new Annexes after SUP 16 Annex 34B. The following text is all new and is not underlined.

16 Annex 35AR

CCR001 Consumer Credit data: Financial Data

Balance Sheet Items

A

1 Total shareholder funds/Partnership capital/Sole trader capital

2 Intangible Assets/Investments in Subsidiaries/Investment in Own Shares

3 Subordinated debt and subordinated loans

Current Assets

4 Cash

5 Debtors/Other

Current Liabilities

6 Creditors

7 Largest Exposures (including inter-company)	Amount	Counterparty name	Type of exposure
	<input type="text"/>	<input type="text"/>	Please select
	<input type="text"/>	<input type="text"/>	Please select

Income Statement (including regulated business revenue)

8 Total income

9 Retained Profit

CCR002 Consumer Credit data: Volumes

Activities		A	B	C	D
		Fee Mechanism	Revenue	Total Customers	Total Transactions
Lending					
1	Debt purchasing				
2	Hire purchase/conditional sale agreements				
3	Home credit loan agreements				
4	Bill of sale loan agreements				
5	Pawnbroking				
6	High-cost short-term credit				
7	Running-account credit				
8	Other lending				
9 Credit Broking					
10 Debt Management Activity					
11 All other credit-related regulated activity					

CCR003 Consumer Credit data: Lenders

	A	B	C	D	E	F	G
Activities	Total Value (000s)	Total number of Loans	Total number of Loans in Arrears	Total Value in Arrears (000s)	Value of new advances in period (000s)	Ave. annual percentage rate of charge (Total Loan Book)	Highest annual percentage rate of charge (in Period)
1 Debt purchasing							
2 Hire purchase/conditional sale agreements							
3 Home credit loan agreements							
4 Bill of sale loan agreements							
5 Pawnbroking							
6 High-cost short-term credit							
7 Running-account credit							
8 Other lending							

9	Does the firm use charging orders?	A
10	If yes, how many have been issued during the period?	

CCR004 Consumer Credit data: Debt Management Firms

A

1 Total value of relevant debts under management outstanding

2 Total prudential resources requirement

3 Total prudential resources

--

4 Number of debt management plans that end before the end of the term originally agreed

--

CCR005 Consumer Credit data: Client Money & Assets

A

1 What was the highest balance of client money held at any one time during the reporting period?

2 What was the highest number of clients for whom client money was held at any one time during the period?

3 How much client money (if any) did you hold in excess of 5 days following receipt?

CCR006 Consumer Credit data: Debt collection

Firms with permission to operate an electronic system in relation to lending only

A

1 Have you undertaken any debt collection business during the reporting period?

(If the answer to 1 is "no" then do not complete the remainder of the form)

A

B

C

D

E

F

All firms

Stage of debt placement

1st

2nd

3rd

4th

5th

Subsequent

- 2** Total value of debts being pursued for collection
- 3** Total value of debts under collection
- 4** Total number of debts being pursued for collection
- 5** Total number of debts under collection
- 6** Number of debts under collection with missed repayments
- 7** Total income per placement

	A	B	C	D	E	F
	1st	2nd	3rd	4th	5th	Subsequent
2						
3						
4						
5						
6						
7						

CCR007 Consumer Credit Data: key data for credit firms with limited permission

A

1	Revenue from credit-related regulated activities	<input type="text"/>
2	Total revenue (including from activities other than credit-related regulated activities)	<input type="text"/>
3	Number of transactions involving credit-related regulated activities in reporting period	<input type="text"/>
4	Number of complaints related to credit-related activities received in period	<input type="text"/>
5	Credit-related regulated activity carried on in relation to the greatest number of customers in reporting period	<input type="text"/>

16 Annex 35BG

**NOTES FOR COMPLETION OF THE DATA ITEMS RELATING TO CONSUMER
CREDIT ACTIVITIES**

Contents

Introduction	General notes on the data items
CCR001:	Financial data for <i>credit firms</i>
CCR002:	Volumes
CCR003:	Lenders
CCR004:	Debt management
CCR005:	Client Money and Assets
CCR006:	Debt Collecting
CCR007:	Key data for firms with <i>limited permission</i>

Introduction

1. These notes aim to assist firms in completing and submitting the data items relevant to credit-related regulated activities.
2. The purpose of these data items is to provide a framework for the collection of information by the FCA as a basis for its supervisory and other activities. They also have the purpose set out in paragraph 16.12.2G of the Supervision manual, i.e. to help the FCA to monitor firms' financial soundness.
3. The data should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm omits a material item, includes an immaterial item or presents items in a manner which is misleading.

Defined Terms

4. These notes are not intended to provide any new definitions. Some of the terms we use below will already be included in the Glossary of definitions in the FCA Handbook. Where we use an alternative word or phrase we expect firms to apply an ordinary meaning to those phrases.

Scope

5. Most firms with *limited permission* are only required to submit data item CCR007 (Key Data). A firm is not required to submit any data items if the only credit-related regulated activity it carries on is providing credit references. The reporting requirements also do not apply to a not-for-profit body unless it is a not-for-profit debt advice body (and most apply only if, at any point in the last 12 months it has held £1 million or more in client money or, as the case may be, projects that it will hold £1million or more in client money in the next 12 months). An authorised professional firm does not need to submit the data items in *SUP* 16.12.29CR unless it is a CASS debt management firm.
6. All other firms undertaking *credit-related regulated* activities are required to complete the data items applicable to the activities they undertake as set out in *SUP* 16.12.29CR.
7. The credit-related regulated activities are:
 - a. Entering into a regulated credit agreement as lender;
 - b. Exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement
 - c. Credit broking;
 - d. Debt adjusting;
 - e. Debt counselling;
 - f. Debt collecting;
 - g. Debt administration
 - h. Operating an electronic system in relation to lending;
 - i. Regulated consumer hire agreements;
 - j. Providing credit information services;
 - k. Providing credit references

Currency

8. Unless otherwise stated, you should report in the currency of your annual audited accounts, where this is Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Where annual audited accounts are reported in a currency outside those specified above, please translate these values into an equivalent within the list using an appropriate rate of exchange at the reporting date or, where appropriate, at the rates of exchange fixed under the terms of any relevant currency hedging transaction, and that value used in the return.

Unless otherwise stated, figures should be reported in single units.

Data elements

9. These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

CCR001 – Financial data for consumer credit firms

This data item provides the FCA with a snapshot of the assets, liabilities, income and expenditure of a firm, giving an idea of the on-going financial viability and whether this poses any potential risks to consumers.

Balance sheet items		
Total shareholder funds/Partnership capital/Sole trader capital	1A	Incorporated firms: add the value of all types of shares, reserves, retained earnings and verified current year profit. Partnerships and sole traders: add the value of all capital accounts, retained earnings and verified current year profit. LLPs: add the value of all cash and capital accounts.
Intangible Assets/Investments in subsidiaries/Investment in Own Shares	2A	Add the value of intangible assets/goodwill, investments in own shares, investments in subsidiaries, material current year losses and, if applicable, excess LLP member's drawings.
Subordinated debt and subordinated loans	3A	Add the value of any subordinated loans and other subordinated debt.
Current Assets		
Cash	4A	This is money physically held by the firm and money deposited with banks or building societies.
Debtors/Other	5A	Add the value of all types of debtors, stocks, investments (other than those included in 2A) and loans.
Current Liabilities		
Creditors	6A	Add the value of all types of creditors.
Largest Exposures (including inter-company): Amount	7A	Identify the amount of the two largest exposures (including those between the firm and a related entity). These exposures can either be amounts owed to the firm by debtors, or amounts owed by the firm to creditors.
Largest Exposures (including inter-	7B	Identify the name of the counterparty from

company): Counterparty name		or to whom the amounts are owed.
Largest Exposures (including inter-company): Type of exposure	7C	Identify whether the amounts are owed to the firm (debtor) or owed by the firm (creditor).
Income Statement (including regulated business revenue)		
Total income	8A	Submit the total income of the firm in the reporting period, from all activities, both regulated and non-regulated.
Retained Profit	9A	<p>This figure should be the amount of profit or loss retained from the period being reported on.</p> <p>This figure does not relate to the accumulated retained profit figure that appears on the firm's balance sheet, but to the retained profit or loss figure for the period shown on their income statement/P&L.</p>

CCR002 – Consumer Credit data: volumes

This data item provides the FCA with an overall picture of the size of the consumer credit market and how revenue is generated. On an individual firm level, it allows us to look at the relationship between customer numbers, transaction numbers and revenue.

In this data item, firms should complete each row relating to an activity they have permission to undertake.

Column A: Fee mechanism

In this column, firms should identify the predominant method used for applying fees to customers.

For the purposes of answering this question, an upfront fee is a single fee incurred once at the time of the transaction occurring. There are no further fees associated with the transaction. For example, a one-off broking fee.

An ongoing fee is where the fee is split into multiple payments across the lifetime of the product. For example, a percentage charge taken from monthly payments on a debt management plan.

Where a firm only uses upfront fees or only uses ongoing fees, the firm should select “upfront only” or “ongoing only”. “Mainly upfront” and “mainly ongoing” should be used when more than two-thirds of the relevant revenue from that activity is achieved using that method.

With respect to lending activities, “interest only” should be selected if revenue is generated solely from charging interest on loans. “Mainly interest” should be selected if interest accounts for more than two-thirds of the revenue generated. For example, an agreement for high-cost short-term credit may incur a fixed fee plus interest.

“Combination” should be used when no single revenue source (upfront fees, ongoing fees and interest) accounts for more than two-thirds of the relevant revenue from that activity.

Column B: Revenue

In this column, firms should enter the amount of revenue generated by each activity undertaken.

Column C: Total Customers:

In this column, firms should enter the total number of individual customers that have taken up a credit-related product during the period. This figure should be the number of customers, rather than the number of transactions. For example, if the same customer has taken out three loans, this counts as one towards the “total customers” figure.

A *credit repair firm* should count the number of individual customers who have engaged their services during the period.

Column D: Total Transactions:

In this column, firms should identify the total number of transactions that were made during the period. This figure should always be equal to or greater than the figure in column C. For example, if the same customer has taken out three loans, this counts as three towards the “total transactions” figure.

In the case of pawnbroking, each separate item held as security should be counted as a single transaction.

A debt management firm or a not-for-profit debt advice body to which this data item applies should record the number of debt management plans that they have entered into during the reporting period.

A credit repair firm does not need to complete this field.

Rows 1 to 8: Lending

The rows under the heading “Lending” relate to the different types of lending that are covered by *consumer credit lending*. For each type of lending that a firm undertakes, the row relating to that activity should be completed in full.

Firms undertaking logbook lending should report data relating to this activity in the row labelled “Bill of sale loan agreements.”

Row 9: Credit Broking

This row should be completed in full by all firms carrying on the activity of *credit broking* as defined in article 36A of the *Regulated Activities Order*.

Row 10: Debt Management Activity

This row should be completed in full by a *debt management firm* or a *not-for-profit debt advice body* to which this data item applies.

Row 11: All other credit-related regulated activity

Firms should include in this row data relating to all other *credit-related regulated activities* (defined in the Handbook *Glossary*) not covered in rows 1 to 10. The row should be completed in full and include the total of all other *credit-related regulated activities* that a firm undertakes.

CCR003 – Consumer Credit data: Lenders

The purpose of this data item is to give the FCA an understanding of the number and value of credit-related loans that exist, and the extent of arrears attached to those loans. This data item will also provide information on interest rates being charged on those loans.

In this data item, firms should complete each row relating to lending sub-category that they have permission to undertake.

Firms undertaking logbook lending should report data relating to this activity in the row labelled “Bill of sale loan agreements.”

Column A: Total Value (000s)

In this column, a firm should enter the total value of loans outstanding at the end of the reporting period.

Column B: Total # Loans

In this column, the firm should enter the total number of loans in its loan book at the end of the reporting period. In the case of pawnbroking, each item that has been used as security should be counted as a separate loan.

Column C: Total # Loans in Arrears

In this column, a firm should enter the number of loans that had overdue repayments at the end of the reporting period.

Column D: Total Value of Arrears (000s)

In this column, a firm should enter the total value of arrears that existed in its loan book at the end of the reporting period.

Column E: Total Value of New Advances in Period (000s)

In this column, a firm should enter the total value of loans made during the reporting period. In the case of Debt Purchasing, a firm should report the value of loans purchased during the period.

Column F: Ave. rate of interest (Total loan book)

The firm should calculate the average (mean) APR on all the current loans in its loan book at the period end. APR should be calculated in accordance with CONC App 1.2 in the Consumer Credit sourcebook.

The amount entered will be a percentage with no decimal places.

Worked example:

A firm has the following loans:

- 4 loans of £1000 with 300% APR
- 3 loans of £500 with 400% APR
- 2 loans of £200 with 500% APR
- 1 loan of £100 with 750% APR

Average rate of interest is calculated as follows:

$$((4 \times 300) + (3 \times 400) + (2 \times 500) + (1 \times 750)) / 10$$

Column G: Highest rate of interest (in period)

Firms should enter the highest APR that has been applied during the reporting period to a single loan. APR should be calculated in accordance with CONC App 1.2 in the Consumer Credit sourcebook.

The amount entered will be a percentage with no decimal places.

CCR004 – Consumer Credit data: Debt Management Firms

This data item is intended to reflect the underlying prudential requirements contained in CONC 10 and allows monitoring against the requirements set out there.

This data item must be completed in sterling (000's).

Total value of <i>relevant debts under management</i> outstanding	1A	Firms should enter the total of the value of all the <i>relevant debts under management</i> that are used to calculate the firm's current prudential resources requirement. This should be the figure calculated at the latest accounting reference date, or, if there has been a change in the value of all the <i>relevant debts under management</i> of more than 15%, the re-calculated figure. See <i>CONC 10.2.5R</i> to <i>CONC 10.2.10G</i> and <i>CONC 10.2.13R</i> to <i>CONC 10.2.14R</i> .
Total prudential resources requirement	2A	Firms should enter whichever figure is higher out of: a) £5000; and b) the variable prudential resources requirement that is calculated based on the value of relevant debts under management outstanding entered in element 1A (See <i>CONC 10.2.5R</i> , <i>CONC 10.2.8R</i> and <i>CONC 10.2.11G</i> to <i>CONC 10.2.12G</i>). NB: this data item must be completed in '000s, so if £5000 is the highest requirement, this should be submitted as "5".
Total prudential resources	3A	Firms should enter their total prudential resources, calculated in accordance with <i>CONC 10</i> .
Number of debt management plans that end before the end of the term originally agreed	4A	Firms should identify the number of debt management plans that ended earlier than stated in the original contract during the reporting period.

CCR005 – Consumer Credit data: Client Money and Assets

The purpose of this data item is so that the FCA has an understanding of how much client money and assets is being held by firms in relation to credit activities.

<p>What was the highest balance of client money held during the reporting period?</p>	<p>1A</p>	<p>A CASS debt management firm should enter the highest total amount of client money that was held in respect of debt management activity at a single point in time during the reporting period.</p>
<p>What was the highest number of clients for whom client money was held during the reporting period?</p>	<p>2A</p>	<p>A CASS debt management firm should enter the highest number of clients for whom client money was held in respect of debt management activity at a single point in time during the reporting period.</p>
<p>How much client money (if any) did you hold in excess of five days following receipt?</p>	<p>3A</p>	<p>If a CASS large debt management firm, at any point during the reporting period, held client money for an individual client, relating to a single transaction, in excess of five days of receipt of cleared funds, it should report the aggregate balance of this client money (ie, the sum of all the amounts that were held longer than five days). A CASS large debt management firm should report '0' if it did not hold client money in excess of five days at any point during the reporting period.</p> <p>In accordance with CASS 11, a CASS large debt management firm must pay any client money it receives to creditors as soon as reasonably practicable, save in the circumstances set out in in CASS 11. In the FCA's view the payment to creditors should normally be within five business days of the receipt of cleared funds.</p>

CCR006 – Consumer Credit data: Debt collection

The purpose of this data item is to give the FCA an understanding of the activities of firms undertaking debt collection, the size of the market and identify potential areas where there is risk of consumer detriment.

1A Have you undertaken any debt collection business during the reporting period?

Firms that have the permission to operate an electronic system in relation to lending (peer-to-peer lending) are required to submit CCR006 because the scope of that permitted activity allows firms to undertake debt collection. If a peer-to-peer lender has not undertaken any debt collection business, they should answer “no” and do not have to complete the remainder of the data item.

Stage of debt placement

The firm should complete each column in which they have debts to collect. All debts at sixth stage or lower should be aggregated and reported in column F.

Debt placement is the placement of an overdue account, passed out for debt collection either through an internal collection strategy (also known as in-house) or outsourced to a specialist third party debt collection agency. Each time the debt is passed to a new agency for collection, the stage of debt placement increases.

Total value of debts being pursued for collection	2	The firm should report the total value of all the debts that are being actively pursued for collection at the end of the reporting period.
Total value of debts under collection	3	The firm should report the total value of all the debts that it has on its books to collect at the end of the reporting period.
Total number of debts being pursued for collection	4	The firm should report the number of all the debts that are being actively pursued for collection at the end of the reporting period.
Total number of debts under collection	5	The firm should report the number of individual debts that it has on its books to collect at the end of the reporting period.
Number of debts under collection with missed repayments	6	The firm should identify the number of debts under collection on its books that have missed repayments.
Total income per placement (000s)	7	The firm should indicate the amount of income that has been attributed to debts collected under each stage of placement.

CCR007 – Key data for credit firms with limited permission

The purpose of this data item is so that the FCA can collect a small, proportionate amount of data from the large population of firms with limited permission undertaking *credit-related regulated activities*, to enable monitoring of the market with a risk-based approach.

Revenue from credit-related regulated activities	1A	A firm should include the total revenue received from all <i>credit-related regulated activities</i> during the period.
Total revenue (including from activities other than credit-related regulated activities)	2A	A firm should all include the total revenue received from all its business undertaken during the reporting period, both regulated and unregulated.
Number of credit-related regulated transactions in reporting period	3A	A firm should identify how many credit-related regulated activity transactions it has undertaken during the period. In relation to debt counselling, the amount should relate to the number of occasions on which advice has been given.
Number of complaints relating to credit-related activities received in period	4A	A firm should submit the total number of complaints received in relation to credit-related activities undertaken by the firm which it has been required to deal with under the rules in <i>DISP</i> .
Credit-related regulated activity carried on in relation to the greatest number of customers in reporting period	5A	Selecting from the following options, a firm should identify which <i>credit-related regulated activity</i> generates the highest amount of turnover. <ul style="list-style-type: none"> • Lending • Consumer hire • Not-for-profit debt counselling • Secondary credit broking • Other

Insert the following new transitional provisions after TP 1.8 AIFMD. The text is not underlined.

TP 1.9 Credit-related regulated activities

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provisions	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1	The changes to SUP 16.11 and SUP 16.12 set out in Annex I of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014	R	The changes effected by the Annex listed in column (2) to SUP 16.11 and SUP 16.12 do not apply until 1 October 2014.	1 April 2014 to 1 October 2014	1 April 2014
2	The changes to SUP 16.12 set out in Annex I of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014	G	The effect of (1) is that, for a <i>firm</i> with <i>permission</i> to carry on only a <i>credit-related regulated activity</i> , the reporting frequencies and submission deadlines for the <i>data items</i> in SUP 16.12.29CR are calculated from the <i>firm's</i> next <i>accounting reference date</i> that follows 1 October 2014. The first <i>data items</i> should cover the period from 1 October 2014 to the <i>accounting reference date</i> or the end of the first reporting period if the frequency is half-yearly.	1 April 2014 to 1 October 2014	1 April 2014
3	SUP 16.12	G	<i>Firms</i> are reminded that CONC 12.1.4R further provides that (a) SUP 16 does not apply to a <i>firm</i> with only an <i>interim permission</i> ; and (b) SUP 16.11 and SUP 16.12 apply to a <i>firm</i> with an <i>interim permission</i> that is treated as a variation of <i>permission</i> for <i>credit-</i>	1 April 2014 until <i>interim permission</i> ceases to have effect	1 April 2014

		<p><i>related regulated activity</i> as if the changes effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made. So, if such a <i>firm</i> is granted <i>permission</i> to carry on (or is granted a variation to add to its <i>permission</i>) <i>credit-related regulated activity</i> (and an <i>interim permission</i> the firm was treated as having ceases to have effect) on a date after 1 October 2014, the reporting frequencies and submission deadlines for the <i>data items</i> in SUP 16.12.29CR are calculated by reference to the <i>firm's accounting reference date</i> that follows the date on which the notice of the grant of <i>permission</i> or the variation of <i>permission</i> under section 55V(5) of the <i>Act</i> takes effect. The first <i>data items</i> should cover the period from that date (not 1 October 2014) to the <i>accounting reference date</i> or the end of the first reporting period if the frequency is half-yearly.</p>		
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Annex J

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013	Description	Handbook reference	Decision maker
...			

<u>The Financial Services Act 2012 (Consumer Credit) Order 2013</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Article 3(3)</u>	<u>when the FCA is proposing or deciding to take action against an approved person for being knowingly concerned in a contravention of a CCA Requirement by an authorised person, by exercising the disciplinary powers conferred by section 66*</u>		<u>RDC</u>
<u>Article 3(7)</u>	<u>when the FCA is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a permission or</u>		<u>RDC</u>

	<u>impose a restriction in relation to the carrying on of a <i>regulated activity</i> (under section 206A) for the contravention of a <i>CCA Requirement</i>. This applies in respect of an <i>authorised person</i>, or an <i>unauthorised person</i> to whom section 404C applies*</u>		
<u>Article 3(10)</u>	<u>when the <i>FCA</i> is proposing or deciding to exercise the power under section 384(5) to require a <i>person</i> to pay restitution in relation to the contravention of a <i>CCA Requirement</i>*</u>		<u>RDC</u>

2 Annex Statutory notices and the allocation of decision making
2G

Alternative Investment Fund Managers Regulations 2013	Description	Handbook reference	Decision maker
...			

<u>The Financial Services Act 2012 (Consumer Credit) Order 2013</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Article 3(6)</u>	<u>when the <i>FCA</i> is exercising its power of intervention in respect of an <i>incoming firm</i> by reference to the contravention or likely contravention of a <i>CCA Requirement</i></u>	<u>SUP 14</u>	<u>RDC or executive procedures</u> <u>See DEPP 2.5.7G and DEPP 2.5.7AG</u>

...

Sch 3 Fees and other required payments

...

Sch 3.2G	The <i>FCA</i> 's power to impose financial penalties is contained in:
	...
	the <i>Referral Fees Regulations</i>
	<u>the <i>CCA Order</i></u>

...

Sch 4 Powers Exercised

...

Sch 4.2G	The following additional powers and related provisions have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :
	...
	Regulation 30 (Application of Part 26 of the 2000 Act) of the <i>Referral Fees Regulations</i>
	<u>Article 3(11) (Application of provisions of FSMA 2000 in connection with failure to comply with the 1974 Act) of the <i>CCA Order</i></u>
	<u>Article 4 (Statement of policy) of the <i>CCA Order</i></u>

Annex K

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

INTRO 1 Introduction

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, ~~licensees~~* and *VJ participants*) and the *Financial Ombudsman Service*.

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* made by the *FCA* and rules made (and *standard terms* set) by *FOS Ltd* with the consent or approval of the *FCA*.

The powers to make rules (or set *standard terms*) relating to *firms, payment service providers, electronic money issuers, ~~licensees~~* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

Chapter 2 sets out the scope of the *Financial Ombudsman Service's* ~~three~~ two jurisdictions:

- the *Compulsory Jurisdiction*;
- ~~the *Consumer Credit Jurisdiction*~~; and
- the *Voluntary Jurisdiction*.

The scope of the ~~three~~ two jurisdictions is defined by...

...

1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

- (1) ...; and
- (2) ~~*persons covered by the Consumer Credit Jurisdiction (licensees)*~~; and [deleted]
- (3) ...

...

1.1.10 R In relation to a *firm's* obligations under this chapter, references to a *complaint* also include an expression of dissatisfaction which is capable of becoming a *relevant new complaint*, ~~or a *relevant transitional complaint* or a *relevant new credit-related complaint*.~~

...

Application to licensees and VJ participants

1.1.14 R ~~This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to licensees for complaints from eligible complainants. [deleted]~~

...

1.1.16 G Although ~~licensees and VJ participants~~ are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should it be necessary.

1.1.17 R ~~In relation to the *Consumer Credit Jurisdiction* only, FOS Ltd may dispense with, or modify, the application of the *rules* in this chapter to licensees where it considers it appropriate to do so and is satisfied that:~~

(1) ~~compliance by the licensee with the *rules* would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and~~

(2) ~~it would not result in undue risk to the persons whose interests the *rules* were intended to protect. [deleted]~~

1.1.18 G ~~This power is intended to deal with exceptional circumstances, for example, where it is not possible for a licensee to meet the specified time limits, and any dispensation or modification is likely to be rare. [deleted]~~

...

1.10.1 R (1) ~~Twice Unless (2) applies, twice a year a firm must provide the FCA with a complete report concerning complaints received from eligible complainants. The report must be set out in the format in DISP 1 Annex 1R.~~

(2) If a firm has permission to carry on only credit-related regulated activities and has revenue arising from credit-related regulated activities that is less than or equal to £5,000,000 a year, the firm must provide the FCA with a complete report concerning complaints received from eligible complainants once a year.

(3) The report required by (1) and (2) must be set out in the format in DISP 1 Annex 1R.

(4) Paragraphs (1) and (2) do not apply to a firm with only a limited permission unless that firm is a not-for-profit debt advice body that at any point in the last 12 months has held £1 million or more in client money or as the case may be, projects that it will hold £1million or more in client money in the next 12 months.

1.10.1-A G A firm with only a limited permission to whom DISP 1.10.1R(1) and (2) do not apply is required to submit information to the FCA about the number of complaints it has received in relation to credit-related activities under the reporting requirements in SUP 16.12 (see, in particular, data item CCR007 in SUP 16.12.29CR). A firm with limited permission to whom DISP 1.10.1R(1) and (2) do not apply is also subject to the complaints data publication rules in DISP 1.10A.

...

1.10.1D G Not all the firms in the group need to submit the report jointly. Firms should only consider submitting a joint report if it is logical to do so, for example, where the firms have a common central complaints handling team, and the same accounting reference date and are all subject to the same reporting frequencies and submission deadlines.

...

1.10.2 R Part A of DISP 1 Annex 1R requires (for the relevant reporting period) information about:

...

1.10.2-A R Part B of DISP 1 Annex 1R requires (for the relevant reporting period) information about:

(1) the total number of complaints received by the firm;

(2) the total number of complaints closed by the firm;

(3) the total number of complaints:

(a) upheld by the firm in the reporting period; and

(b) outstanding at the beginning of the reporting period; and

(4) the total amount of redress paid in respect of complaints during the reporting period.

...

1.10.3 G For the purpose of DISP 1.10.2R, DISP 1.10.2-AR and DISP 1.10.2AR, when completing the return, the firm should take into account the following matters.

...

(2) Under *DISP* 1.10.2R(3)(a) or *DISP* 1.10.2-AR, a *firm* should report ...

(3) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(4), *DISP* 1.10.2-AR(4) or *DISP* 1.10.2AR, redress should be interpreted ...

(4) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(4), *DISP* 1.10.2-AR(4) or *DISP* 1.10.2AR, redress should not, however, include ...

...

1.10.4 R ~~The~~ Unless *DISP* 1.10.4AR applies, the relevant reporting periods are:

...

1.10.4A R If a *firm* has permission to carry on only credit-related regulated activities and has revenue arising from credit-related regulated activities that is less than or equal to £5,000,000 a year, the relevant reporting period is the year immediately following the *firm's* accounting reference date.

...

Meaning of revenue

1.10.10 G In *DISP* 1.10, references to revenue in relation to any *firm* do not include the amount of any repayment of any *credit* provided by that *firm* as *lender*.

...

Obligation to publish summary of complaints data or total number of complaints

1.10A.1 R (1) ~~Where~~ Unless (1A) applies to the *firm*, where, in accordance with *DISP* 1.10.1R, a *firm* submits a report to the *FCA* reporting 500 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).

(1A) (a) This paragraph applies to a *firm* which:

(i) has permission to carry on only credit-related regulated activities; and

(ii) has revenue arising from credit-related regulated activities that is less than or equal to £5,000,000 a year.

(b) Where a *firm* to which this paragraph applies submits a report to the *FCA* in accordance with *DISP* 1.10.1R reporting 1000 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data

summary).

- (2) Where, in accordance with *DISP* 1.10.1CR, a *firm* submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 500 or more *complaints*, it must publish a summary of the *complaints* data contained in the joint report (the *complaints* data summary), unless it is a *firm* to which (1A) applies.
- (3) Where, in accordance with *DISP* 1.10.1CR, a *firm* to which (1A) applies submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 1000 or more *complaints*, it must publish a summary of the *complaints* data contained in the joint report (the *complaints* data summary).
- (4) Where, in accordance with *SUP* 16.12.4R and *SUP* 16.12.29CR, a *firm* with a *limited permission* submits data item CCR007 to the *FCA* reporting 1000 or more *complaints*, it must publish the total number of *complaints* received.

...

- 1.10A.3 R
- (1) Where the *firm's* relevant reporting period (as defined in *DISP* 1.10.4R or *DISP* 1.10.4AR as the case may be) ends between 1 January and 30 June, the *firm* must publish the *complaints* data summary no later than 31 August of the same year.
 - (2) Where the *firm's* relevant reporting period (as defined in *DISP* 1.10.4R or *DISP* 1.10.4AR as the case may be) ends between 1 July and 31 December, the *firm* must publish the *complaints* data summary no later than 28 February of the following year.
 - (3) Where the *firm* is a *firm* with only a *limited permission* and its *accounting reference date* falls between 1 January and 30 June, the *firm* must publish the total number of *complaints* received no later than 31 August of the same year.
 - (4) Where the *firm* is a *firm* with only a *limited permission* and its *accounting reference date* falls between 1 July and 31 December, the *firm* must publish the total number of *complaints* received no later than 28 February of the following year.

...

- 1.10A.4 R
- A *firm* must immediately confirm to the *FCA*, in an email submitted to complaintsdatasummary@fca.org.uk, that the *complaints* data summary or total number of *complaints* (as appropriate) accurately reflects the report submitted to the *FCA*, that the summary or total number of *complaints* (as appropriate) has been published and where it has been published.

...

1.10A.5 E A *firm* will be taken to have complied with *DISP* 1.10A.1R(1), ~~of (1A)~~, (2), (3) or (4) if within the relevant time limit set out in *DISP* 1.10A.3R the *firm*:

- (1) ensures that another *person* publishes the *complaints* data summary or total number of *complaints* (as appropriate) on its behalf; and
- (2) publishes details of where this summary or total number of *complaints* (as appropriate) is published.

...

1.10A.6 R Any *firm* covered by a joint report, other than the *firm* that submitted the joint report, must provide details of where the *complaints* data summary or total number of *complaints* (as appropriate) is published to any *person* who requests them.

...

1.10A.7 G *Firms* may choose how they publish the *complaints* data summary or total number of *complaints* (as appropriate). However, the summary or total number of *complaints* (as appropriate) should be readily available. For this reason, the *FCA* recommends that *firms* should publish the summary or total number of *complaints* (as appropriate) on their websites.

1.10A.8 G (1) The *FCA* recommends that *firms* should publish additional information alongside their *complaints* data summaries or total number of *complaints* (as appropriate) in order to relate the number of complaints to the scale of the *firm's* relevant business. *Firms* are recommended to publish the relevant standard metrics set out in the table at *DISP* 1 Annex 1AG with the summaries. Where the *complaints* data summary or total number of *complaints* (as appropriate) relates to a joint report the metrics should cover all the *firms* included in the joint report.

...

Meaning of revenue

1.10A.9 G In *DISP* 1.10A, references to revenue in relation to any *firm* do not include the amount of any repayment of any *credit* provided by that *firm* as *lender*.

...

1 Annex 1R Complaints return form
This annex consists only of one or more forms. Forms are to be found through the following address:

Complaints return form - DISP 1 Annex 1 R

DISP 1 Ann 1R

Illustration of the reporting requirements, referred to in *DISP 1.10.1R*

Complaints Return (DISP 1 Ann 1R)

GROUP REPORTING / NIL RETURN DECLARATION						
1	Does the data reported in this return cover complaints relating to more than one entity? If 'Yes', then list the <i>firm</i> reference numbers (FRNs) of all the entities included in this return.	Yes / No				
2	We wish to declare a nil return	Yes / No				
RETURN DETAILS REQUIRED						
3	Total complaints outstanding at reporting period start date					

PART A

Complaints closed and total redress paid during the reporting period

		A	B	C	D	E
	Product/service grouping	Complaints closed within 4 weeks	Complaints closed > 4 but within 8 weeks	Complaints closed > 8 weeks	Total complaints upheld by firm	Total redress paid
4	Banking <u>and credit cards</u>					
5	Home finance					
6	General insurance and pure protection					
7	Decumulation, life and					

	pensions					
8	Investments					

Complaints opened

		A	B	C	D	E	
	Product/ service grouping	Product/service	Advising, selling and arranging	Terms and disputed sums/charges	General admin/ customer service	Arrears related	Other
9	<u>Banking and credit cards</u>	Current accounts					
10		Credit cards					
46		<u>Overdrafts</u>					
11		<u>Unregulated loans</u>					
12		Savings (inc. Cash ISA) and other banking					
13	<u>Home finance</u>	Equity release products					
14		Impaired credit mortgages					
15		Other regulated home finance products (<u>including second and subsequent charge mortgages</u>)					
16		Other unregulated home finance products					
17	<u>General insurance & pure protection</u>	Payment protection insurance					

PART B

		<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
	<u>Activities</u>	<u>Total complaints outstanding at reporting period start date</u>	<u>Complaints Received</u>	<u>Complaints Closed</u>	<u>Complaints Upheld by firm</u>	<u>Total Redress paid £</u>

	<u>Lending</u>					
<u>35</u>	<u>Debt purchasing (including complaints in relation to the underlying debt that has been purchased)</u>					
<u>36</u>	<u>Hire purchase/ conditional sale agreements</u>					
<u>37</u>	<u>Home credit loan agreements</u>					-
<u>38</u>	<u>Bill of sale loan agreements, e.g. logbook lending</u>					
<u>39</u>	<u>Pawnbroking</u>					
<u>40</u>	<u>High-cost short-term credit</u>					
<u>41</u>	<u>Other lending</u>					
<u>42</u>	<u>Credit Broking</u>					
<u>43</u>	<u>Debt Management activity</u>					
<u>44</u>	<u>Debt collecting</u>					
<u>45</u>	<u>All other credit-related activity</u>					

NOTES ON THE COMPLETION OF THIS RETURN

Nil returns

If no *complaints* have been received during the reporting period and no *complaints* were outstanding at the beginning of the period, the *firm* may submit a NIL RETURN by clicking on the relevant box...

Product/service groupings

~~Complaints~~ Unless otherwise specified, *complaints* should be allocated to these groupings based on the product or service the *complaint* relates to.

If a *firm* has not received any *complaints* relating to a particular product or service during the reporting period, the relevant box should be left blank.

Product and cause categories

The 'other' categories should only be used in exceptional circumstances when none of the specific product or cause categories are appropriate.

A *complaint* should be reported against the product/service element complained about; this may be different to the main policy itself. For example, for a term assurance policy with an attaching critical illness option, where the *complaint* relates to the term assurance element, it should be reported under 'other pure protection' but where the *complaint* relates to the critical illness element, it should be reported under 'critical illness'.

A *complaint* should only be reported in Part B if it is not covered by a specific category in Part A.

A lender should report *complaints* about the way in which it collects debts due under loans where it is the lender in the relevant lending category.

1 Annex 1AG Recommended metrics

This table belongs to *DISP* 1.10A.8G

Type of business	Contextualised new complaint numbers	Recommended metrics

Banking and loans <u>credit cards</u>	<i>Complaints</i> per 1,000 accounts	The tariff base (number of accounts) at row 1, column 2 of the table in <i>FEES 5 Annex 1 R</i> as reported in the <i>firm's</i> most recent statement of total amount of <i>relevant business</i> <u>or if this tariff base is not relevant, the applicable tariff base under <i>FEES 5 Annex 1R</i></u>
...		
Decumulation, life and pensions (intermediation)	<i>Complaints</i> per £1m of annual eligible income	The <i>firm's</i> annual eligible income as defined in class C2 of <i>FEES 6 Annex 3R</i>
<u>Credit-related activities</u>	<u><i>Complaints</i> per £1m of annual eligible income</u>	<u>The applicable tariff base under <i>FEES 5 Annex 1R</i></u>
Note 1: ...		
<u>Note 5: Where a <i>firm</i> undertakes both (a) banking and credit cards and (b) other credit-related activities, it can chose to use the metric which forms the greater part of its business.</u>		
<u>Note 6: Where a <i>firm</i> undertakes both (a) home finance and (b) credit-related activities, it can chose to use the metric which forms the greater part of its business.</u>		

...

1 Annex 1BR Complaints publication report

This table belongs to *DISP 1.10A.2R*

Complaints publication report

Firm name:

Group: (if applicable):

Other firms included in this report (if any):

Period covered in this report: [e.g. 1 January – 30 June ~~2010~~ 2015 or 1 January – 31 December 2015]

Brands/trading names covered:

	Number of complaints opened	Number of complaints closed	Complaints closed within 8 weeks (%)	Closed complaints upheld by firm (%)
<u>Banking and credit cards</u>				
...				
<u>Credit-related</u>			<u>Not applicable</u>	

...

1 Annex 2G Application of DISP 1 to type of respondent/complaint

...

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4-1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
...						
<i>licensee</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (<i>DISP 1.3.4G to DISP 1.3.5G do not apply</i>)	Applies for <i>eligible complainants</i> (<i>DISP 1.6.8G does not apply</i>)	Does not apply	Does not apply	Does not apply
...						

...

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction*, ~~the *Consumer Credit Jurisdiction*~~ and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* ~~three~~ two jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, *payment services* and issuance of *electronic money*, and covers:
 - (a) certain *complaints* against *firms* (and businesses which were *firms* at the time of the events complained about); ~~and~~

(b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order*,² and the *Mortgages and General Insurance Complaints Transitional Order*; and

(c) *relevant credit-related complaints* against businesses which were, at the time of the events complained about, covered by a standard licence under the Consumer Credit Act 1974, or formerly authorised to carry on an activity by virtue of section 34(A) of that Act, in accordance with article 11 of the *Regulated Activities Amendment Order*;

(2) ~~the *Consumer Credit Jurisdiction* covers certain *complaints* against *licensees* (and businesses which were *licensees* at the time of the events complained about); and [deleted]~~

(3) ...

2.1.2 G *Relevant complaints* covered by the *Compulsory Jurisdiction* comprise

(1) ...

(2) *relevant new complaints* about events before *commencement* but referred to the *Financial Ombudsman Service* after *commencement* under the *Ombudsman Transitional Order*; ~~and~~

(3) *relevant transitional complaints* referred to the *Financial Ombudsman Service* after the *relevant commencement date* under the *Mortgages and General Insurance Complaints Transitional Order*;²

(4) *relevant existing credit-related complaints* referred to the *Financial Ombudsman Service* before 1 April 2014 which were formerly being dealt with under the *Consumer Credit Jurisdiction* and which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*; and

(5) *relevant new credit-related complaints* about events which took place before 1 April 2014 but referred to the *Financial Ombudsman Service* on or after 1 April 2014 which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*.

...

2.2.1 G The scope of the *Financial Ombudsman Service*'s ~~three~~ two jurisdictions depends on:

...

...

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory*

Jurisdiction if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) ...
 - (1A) ...
 - (2) ~~*consumer credit activities*~~; [deleted]
 - (3) ...
 - (4) lending *money* (excluding *restricted credit* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
 - (5) paying money by a *plastic card* (excluding a *store card* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
- ...

...

Activities by firms and unauthorised persons previously subject to the Consumer Credit Jurisdiction

2.3.2-A G In accordance with article 11 of the *Regulated Activities Amendment Order*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) a relevant existing credit-related complaint referred to the *Financial Ombudsman Service* before 1 April 2014 which was formerly being dealt with under the *Consumer Credit Jurisdiction*; and
- (2) a relevant new credit-related complaint referred to the *Financial Ombudsman Service* on or after 1 April 2014 which relates to an act or omission which took place before 1 April 2014;

provided that:

- (a) the *complaint* could have been dealt with under the *Consumer Credit Jurisdiction* (disregarding whether the complainant would have been eligible under rules made for the purposes of the *Consumer Credit Jurisdiction* and whether the complaint would have fallen within a description specified in those rules) but for the repeal of section 226A of the *Act*; and
- (b) the complainant is eligible and wishes to have the *complaint* dealt with under the *Financial Ombudsman Service*.

...

2.3.2A R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *payment service provider* in carrying on:

- (1) *payment services*; or
- (2) ~~*consumer credit activities*~~ *credit-related regulated activities*;

...

2.3.2B R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by an *electronic money issuer* in carrying on:

- (1) issuance of *electronic money*; or
- (2) ~~*consumer credit activities*~~ *credit-related regulated activities*;

...

...

2.4 ~~To which activities does the Consumer Credit Jurisdiction apply?~~ [deleted]

2.4.1 R ~~The *Ombudsman* can consider a *complaint* under the *Consumer Credit Jurisdiction* if:~~

- ~~(1) it is not covered by the *Compulsory Jurisdiction*; and~~
- ~~(2) it relates to an act or omission by a *licensee* in carrying on~~
 - ~~(a) one or more *consumer credit activities*; or~~
 - ~~(b) any ancillary activities, including advice carried on by the *licensee* in connection with them. [deleted]~~

...

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

- (1) it is not covered by the *Compulsory Jurisdiction* ~~or the *Consumer Credit Jurisdiction*~~; and
- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

- (c) activities which (at ~~22 July 2013~~ 1 April 2014) would be covered by the *Compulsory Jurisdiction* if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1 G*);
- (d) ~~activities which would be *consumer credit activities* if they~~

~~were carried on from an establishment in the United Kingdom;~~ [deleted]

...

- (f) lending *money* (excluding *restricted credit* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
- (g) paying *money* by a *plastic card* (excluding a *store card* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);

...

Consumer Credit Jurisdiction

2.6.3 R ~~The Consumer Credit Jurisdiction covers only complaints about the activities of a licensee carried on from an establishment in the United Kingdom.~~ [deleted]

...

2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(10) the complainant gave the *respondent* a guarantee or security for:

...

(c) an actual or prospective *regulated consumer credit agreement*;

...

(11) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in ~~operating a credit reference agency as defined by section 145(8) of the Consumer Credit Act 1974 (as amended)~~ *providing credit references*;

(12) the complainant is a *person*:

- (a) from whom the *respondent* has sought to recover payment under a ~~*regulated consumer credit agreement*~~ or ~~*regulated consumer hire agreement*~~ (whether or not the *respondent* is a party to the agreement); or
- (b) in relation to whom the *respondent* has sought to perform duties, or exercise or enforce rights, on behalf of the creditor or owner, under a ~~*regulated consumer credit agreement*~~ or

~~regulated consumer hire agreement~~ in carrying on ~~debt administration as defined by section 145(7A) of the Consumer Credit Act (1974) (as amended)~~ debt administration;

...

(14) (where the *respondent* is a *dormant account fund operator*) the complainant is (or was) a customer of a *bank* or *building society* which transferred any *balance* from a *dormant account* to the *respondent*;

(15) the complainant is either a *borrower* or a *lender* under a *P2P agreement* and the *respondent* is the *operator of an electronic system in relation to lending*.

...

2.7.9 R The following are not *eligible complainants*:

(1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, *licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:

(a) ...

(ab) ...

(b) the *licensee* or *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction*, ~~the *Consumer Credit Jurisdiction*~~, or the *Voluntary Jurisdiction*;

(2) ...

(3) ~~(in the *Consumer Credit Jurisdiction*):~~

(a) ~~a *body corporate*~~;

(b) ~~a *partnership* consisting of more than three persons~~;

(c) ~~a *partnership* all of whose members are *bodies corporate*~~; or

(d) ~~an *unincorporated body* which consists entirely of *bodies corporate*~~. [deleted]

...

2 Annex 1G Regulated activities for the Voluntary Jurisdiction at ~~22 July 2013~~ 1 April 2014

This table belongs to *DISP* 2.5.1R

- 2.1 G The activities which were covered by the Compulsory Jurisdiction (at ~~22 July 2013~~ 1 April 2014) were:
- (1) for *firms*:
 - ...
 - (c) ~~*consumer credit activities*~~; [deleted]
 - ...
 - (e) lending *money* (excluding *restricted credit* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
 - (f) paying *money* by a *plastic card* (excluding a *store card* where that is not a ~~*consumer credit activity*~~ *credit-related regulated activity*);
 - ...
 - (2) for payment service providers:
 - (a) ...
 - (b) ~~*consumer credit activities*~~ *credit-related regulated activities*;
 - ...
 - (3) for electronic money issuers:
 - (a) issuance of electronic money; ~~or~~
 - (b) ~~*consumer credit activities*~~ *credit-related regulated activities*;
 - ...

The activities which (at ~~22 July 2013~~ 1 April 2014) were *regulated activities* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

- ...
- (14C) ...
- (14D) *credit broking* (article 36A);
- (14E) *operating an electronic system in relation to lending* (article 36H);
- (16) ...
- (16A) *debt adjusting* (article 39D(1) and (2));

(16B) debt counselling (article 39E(1) and (2));

(16C) debt collecting (article 39F(1) and (2));

(16D) debt administration (article 39G(1) and (2));

...

(32A) entering into a regulated credit agreement (article 60B(1));

(32B) exercising, or having the right to exercise, rights and duties under a regulated credit agreement (article 60(B)(2));

(32C) entering into a regulated consumer hire agreement (article 60N(1));

(32D) exercising, or having the right to exercise rights and duties under a regulated consumer hire agreement (article 60N(2));

...

(40A) providing credit information services (article 89A);

(40B) providing credit references (article 89B);

...

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (22) and (23), is carried on in relation to property of any kind or, in the case of (40A) or (40B) relates to information about a *person's* financial standing.

...

3.1.2 R In this chapter, 'out of jurisdiction' means outside the *Compulsory Jurisdiction*, ~~the *Consumer Credit Jurisdiction*~~ and the *Voluntary Jurisdiction* in accordance with *DISP 2*.

...

3.6.2 G Section 228 of the *Act* sets the "fair and reasonable" test for the *Compulsory Jurisdiction* (other than in relation to *consumer redress schemes*) ~~and the *Consumer Credit Jurisdiction*~~ and *DISP 3.6.1R* extends it to the *Voluntary Jurisdiction*.

...

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms* except where the context requires otherwise:

(1) ...

(2) *DISP 2* (Jurisdiction of the Financial Ombudsman Service), except:

- (a) ...
- (b) ~~DISP 2.4 (Consumer Credit Jurisdiction); and~~

...

...

Schedule 2 Notification requirements

...

Sch 2.1	G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		...				
		<i>DISP</i> 1.10.1R(1)
		<u><i>DISP</i> 1.10.1R(2)</u>	<u>Complaints report</u>	<u>Details</u>	<u>A year immediately following the firm's accounting reference date</u>	<u>30 business days</u>
		...				
		<i>DISP</i> 1.10A.4R	Publication of <i>complaints</i> data summary/ <u>total number of complaints</u> (as appropriate)	Email confirmation of publication, containing also a statement that the data summary or <u>total number of complaints</u> (as appropriate) accurately reflects the report submitted to the <i>FCA</i> and stating where the summary/ <u>total number of complaints</u> has been published	Upon publication of <i>complaints</i> data summary/ <u>total number of complaints</u> (as appropriate)	Immediately

...

TP 1.1 Transitional Provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>32</u>	<u>The changes to DISP 1.10 and 1.10A set out in Annex K of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014</u>	<u>R</u>	<u>The changes referred to in column (2) to DISP 1.10 and 1.10A do not apply until 1 October 2014.</u>	<u>1 April 2014 to 1 October 2014</u>	<u>1 April 2014</u>
<u>33</u>	<u>The changes to DISP 1.10 and 1.10A set out in Annex K of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014</u>	<u>G</u>	<p><u>Firms are reminded that CONC 12.1.4R provides that DISP 1.10 and DISP 1.10A (a) do not apply to a person with only an interim permission; and (b) apply to a firm with an interim permission that is treated as a variation of permission with respect to credit-related regulated activity as if the changes to DISP 1.10 and DISP 1.10A effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made.</u></p> <p><u>The effect of TP 32 and CONC 12.1.4R is that:</u></p> <p><u>(1) for a firm with only an interim</u></p>	<u>1 April 2014 to the date on which interim permission ceases to have effect</u>	<u>1 April 2014</u>

		<p><u>permission:</u></p> <p>(a) <u>the reporting frequencies, submission deadlines and time limits for publication for the returns and complaints data summaries in DISP 1.10 and 1.10A are calculated by reference to the firm's next accounting reference date that follows 1 October 2014 or, if later, the date on which the firm's application for permission to carry on credit-related regulated activity is granted;</u></p> <p>(b) <u>the first complaints return in the form in DISP 1 Annex 1R should cover complaints received in the period:</u></p> <p>(i) <u>starting on either 1 October 2014 or, if later, on the date on which the firm's application for permission to carry on credit-related regulated activity is granted; and</u></p> <p>(ii) <u>ending on either the accounting reference date or (if the frequency is twice a year and the start of the period under (i) is more than six months before the accounting reference date) the date that falls six months before the firm's accounting reference date.</u></p> <p>(2) <u>For a firm with an interim permission that is treated as a variation of permission, where the relevant reporting period includes a period after the date on which the firm's application for a variation of permission to add credit-related regulated activity is granted (or, if that date is before 1 October 2014, where the relevant reporting period includes a period after 1 October</u></p>		
--	--	---	--	--

			<p><u>2014):</u></p> <p><u>(a) the complaints return form should be submitted in the form in DISP 1 Annex 1R as amended by Annex K of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014);</u></p> <p><u>and</u></p> <p><u>(b) items 35 to 46 of the form should cover <i>complaints</i> received from 1 October 2014 or, if later, from the date on which the <i>firm's</i> application for <i>permission</i> to carry on <i>credit-related regulated activity</i> is granted.</u></p>		
<u>34</u>	<u>DISP 1.10 and 1.10A</u>	<u>R</u>	<u>DISP 1.10 and DISP 1.10A do not apply to a <i>firm</i> with <i>permission</i> to carry on only one or more <i>credit-related regulated activities</i> (and no other <i>regulated activity</i>) until 1 October 2014.</u>	<u>1 April 2014 to 1 October 2014</u>	<u>1 April 2014</u>

Annex L

Amendments to the Credit Unions sourcebook (CREDS)

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

- 1.1.2 G ...
- (2) Other *permissions* are covered elsewhere in the *Handbook*. So, for example, a *credit union* seeking a *permission* to undertake a *regulated mortgage activity* would need to comply with the requirements in the Mortgages and Home Finance: Conduct of Business sourcebook (*MCOB*), and a *credit union* seeking a *permission* to undertake *insurance mediation* in relation to *non-investment insurance contracts* would need to comply with the requirements in the Insurance: Conduct of Business sourcebook (*ICOBS*).
- ...
- 1.1.2A G A credit union seeking a permission to undertake a credit-related regulated activity would need to comply with the requirements in the Consumer Credit sourcebook (CONC).
- ...
- 2.2.24 G *SYSC 9.1.1R* requires that a *credit union* takes reasonable care to make and retain adequate records of all matters governed by the *Act* or the *CCA*, *secondary* legislation under the *Act* or the *CCA*, or *rules* (including accounting records). These records should be capable of being reproduced in the English language and on paper.
- ...
- 9.2 Reporting**
- 9.2.1 R A *credit union* must provide the *FCA*, once a year, with a report in the format set out in *CREDS 9 Annex 1R* (Credit Union complaints return) which contains (for the relevant reporting period) information about:
- ...
- (2) (for the product/service groupings within section 5) the number of *complaints* closed by the *credit union*:

...

(2A) (for other lending or credit-related activity within section 5A) the number of *complaints* closed by the *credit union*;

...

[**Note:** a transitional ~~provision~~ applies provisions apply to this *rule*: see *CREDS* TP 1.16, *CREDS* TP 1.17 and *CONC* 12.1.4R.]

...

9 Annex 1R Credit union complaints return

for FCA use only)

--

Credit union complaints return

FCA Handbook Reference: CREDS 9 Annex 1R
This is the report referred to in CREDS 9.2.1R

Please read the notes on completion before completing this return

Firm details and reporting period	Section 1
--	------------------

1.01	Firm reference number																		
1.02	Name of credit union																		
1.03	Reporting period	From	mm	yyyy	To	mm	yyyy												

Nil return declaration	Section 2
-------------------------------	------------------

SECTIONS 1 AND 6 MUST STILL BE COMPLETED.

2.01	We wish to declare a Nil Return (Tick the box if applicable)	Nil return	<input type="checkbox"/>
------	---	------------	--------------------------

Complaints outstanding	Section 3
-------------------------------	------------------

3.01	Number of complaints outstanding as at reporting period start date	
------	--	--

Complaints opened during reporting period

Section 4

Product/service grouping	Product/service	Advising, selling and arranging	Terms and disputed sums/charges	General admin/customer service	Arrears related	other
Banking and credit cards	Current Accounts					
	Credit cards					
	Overdrafts					
	Unregulated loans					
	Savings (inc. Cash ISA) and other banking					
Home finance	Equity release products					
	Impaired credit mortgages					
	Other regulated home finance products (including second and supplementary charge mortgages)					
	Other unregulated home finance products					
General insurance and pure protection	Payment Protection Insurance					
	Other general insurance					
	Critical illness					
	Income protection					
	Other pure protection					
Decumulation, life and pensions	Personal pensions and FSAVCs					
	Investment linked annuities					
	Income drawdown products					
	Endowments					
	Other decumulation, life and pensions					
Investments	Investment bonds					
	PEPs/ISAs (exc. cash ISAs)					
	Unit trusts/OEICs					
	Investment trusts					
	Structured products					
	Other investment products/funds					
	Investment management/services(inc. platforms)					

Complaints closed during reporting period

Section 5

Product/service grouping	Number of complaints closed within 8 weeks	Number of complaints closed after more than 8 weeks	Number of complaints upheld by the credit union in the period	Total amount of redress paid to consumers in the period
Banking and credit cards				
Home finance				
General insurance and pure protection				
Decumulation, life and pensions				
Investments				

Credit-related complaints

Section 5A

Activities	<u>Total complaints outstanding at reporting period start date</u>	<u>Complaints Received</u>	<u>Complaints Closed</u>	<u>Complaints Upheld by firm</u>	<u>Total Redress paid £</u>
<u>Other lending</u>					
<u>All other credit-related activity</u>					

Declaration and signature Section 6

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (section 398 of the Financial Services and Markets Act 2000) and a breach of regulatory requirements.

In signing this form, the credit union acknowledges that the data supplied may be used by the FCA in a variety of different ways (including making it publicly available) in support of its principal functions and statutory objectives as provided for under the Financial Services and Markets Act 2000.

I confirm that I have read the notes and that the information given in this return about complaints received by the credit union named at Section 1.02 is accurate and complete to the best of my knowledge and belief.

6.01	Name of person completing on behalf of the credit union	
------	---	--

6.02	Job title	
------	-----------	--

6.03	Signature	
------	-----------	--

6.04	Date	
------	------	--

Notes on completion of this return

...

Leave blanks where no complaints have been received.

All credit unions provide the ~~products~~ product "Savings (inc Cash ISA) and other banking" (members' shares) and ~~"Unregulated loans" (members' loans not secured on land)~~ and may receive complaints for ~~these products~~ this product. The corresponding ~~rows~~ row in the form ~~have~~ has been left shaded to help credit unions with completion; all other rows are clear. Some categories of complaint (shown in the column headings) may not apply to those products.

...

Section 5 – Complaints closed during reporting period

Credit unions will usually receive complaints relating to the 'Banking and credit cards' product/service grouping only and this row is shaded to help with completion. As above – some credit unions may also provide other products; if so they should also fill in the appropriate row even though it is not shaded.

Section 5A – Credit-related complaints

All credit unions carry on "Other lending" (i.e. lending other than credit cards, overdrafts or loans secured on land) and may receive complaints about those activities. The corresponding row in the form has been left shaded to help credit unions with completion (a complaint should only be reported in section 5A if it is not covered by a specific category in sections 4 and 5). Complaints should be included irrespective of whether the lending is regulated under the Consumer Credit Act 1974 and CONC, or is exempt.

Some credit unions may also carry on other credit-related activities (such as debt counselling or debt adjusting), for which they may require further permission. If so, they should enter the number of complaints received in relation to these activities in the box for "All other credit-related activity".

Section 6 – Declaration & signature

The declaration must be signed by an appropriate individual for the credit union submitting this return.

If you have any questions or need help with this return, please approach your usual supervisory contact at the FSA FCA.

...

TP 1 Transitional Provision

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional provision	Transitional provisions: dates in force	Handbook provisions: coming into force
...					
<u>17</u> [FCA]	<u>The changes to CREDS 9.2.1R and CREDS 9 Annex 1R set out in Annex L of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014</u>	<u>R</u>	<u>The changes referred to in column (2) to CREDS 9.2.1R and CREDS 9 Annex 1R do not apply until 1 April 2015.</u>	<u>1 April 2014 to 31 March 2015</u>	<u>1 April 2014</u>
<u>18</u> [FCA]	<u>The changes to CREDS 9.2.1R and CREDS 9 Annex 1R set out in Annex L of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014</u>	<u>G</u>	<u>Under CREDS 9.2.7R, the relevant reporting period is from 1 April to 31 March each year. The effect of (17) is, therefore, that the credit union complaints return in respect of the reporting period 1 April 2014 to 31 March 2015 should be in the format set out in CREDS 9 Annex 1R as it stood before the changes to it by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 were made. The first occasion on which a credit union has to report complaints in the new format required by CREDS 9 Annex 1R, as amended by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 is for the reporting period from 1 April 2015 to 31 March 2016.</u>	<u>1 April 2014 to 31 March 2015</u>	<u>1 April 2014</u>

Annex M

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

App
1.3.1

R ...

(2) Where the *lender* is a body specified in CONC App 1.3.2R or an *authorised person* with *permission to accept deposits*, article 60E(2) of the *Regulated Activities Order* applies only to:

(a) ...

(b) a *borrower-lender agreement* secured by any *legal or equitable mortgage on land to finance*:

...

(c) a *borrower-lender agreement* secured by any *legal or equitable mortgage on land to refinance* any existing indebtedness of the *borrower*, whether to the *lender* or another *person*, under any agreement by which the *borrower* was provided with *credit* for any of the purposes specified in (b)(i) to (iii) above.

(3) (2)(b)(iii) above applies only

(a) where the *lender* is the *lender* under

...

being, in either case, an agreement relating to the *land* referred to in (2)(b)(iii) and secured by a *legal or equitable mortgage on that land*; or

(b) where a *borrower-lender agreement to finance* the alteration, enlarging, repair or improvement of a dwelling, secured by a *legal or equitable mortgage on that dwelling*, is made as a result of any such services as are described in section 4(3)(e) of the Housing Associations Act 1985 which are certified as having been provided by:

...

Annex N

Amendments to the Building Societies Regulatory Guide (BSOG)

In this Annex, striking through indicates deleted text.

1.1.3 G ...
“official list” ...
~~“OFT”~~ ~~Office of Fair Trading~~
...

Annex O

Amendments to the Enforcement Guide (EG)

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

10.19 Where the *person* is not a *firm* or an *appointed representative*, the *FCA* will generally ~~pass the case to the Office of Fair Trading, with a recommendation that it take the enforcement action. The Office of Fair Trading may then decide whether or not to take enforcement action~~ liaise with the Competition and Markets Authority or (as appropriate) a qualifying body under the *Unfair Terms Regulations*.

...

19. Non-FSMA powers

...

19.39 The *FCA*, together with several other UK authorities, has powers under Part 8 of the Enterprise Act to enforce breaches of consumer protection law. Where a breach has been committed, the *FCA* will liaise with other authorities, particularly ~~the Office of Fair Trading (the OFT)~~ Competition and Markets Authority (the CMA), to determine which authority is best placed to take enforcement action. The *FCA* would generally expect to be the most appropriate authority to deal with breaches by authorised firms in relation to regulated activities.

...

19.41 The Community legislation falling within the *FCA*'s scope under the Enterprise Act is:

- the Unfair Terms in Consumer Contracts Directive;¹⁴
- the Comparative and Misleading Advertising Directive;¹⁵
- the E-Commerce Directive;¹⁶
- the Distance Marketing Directive;¹⁷ ~~and~~
- the Unfair Commercial Practices Directive;¹⁸ and
- the Consumer Credit Directive.¹⁹

¹⁹ Directive 2008/48/EC

...

- 19.45 Before the *FCA* may apply for an enforcement order, it must ~~consult with:~~
- ~~the OFT give notice to the CMA of its intention to apply for an enforcement order;~~ and
 - consult the person against whom the enforcement order would be made.

The period for notification and consultation is 14 days before an application for an enforcement order ~~can be~~ is made, or 7 days in the case of an application for an interim enforcement award. The aim of consultation is to ensure that any action taken is necessary and proportionate, and to ensure that businesses are given a reasonable opportunity to put things right before the courts become involved.

...

- 19.49 The *FCA* anticipates that its powers under the *Act* will be adequate to address the majority of breaches which it would also be able to enforce under the Enterprise Act and that there will therefore be limited cases in which it would seek to use its powers as an Enterprise Act enforcer. Where the *FCA* does use its powers under the Enterprise Act, it will have regard to the enforcement guidelines which are published on the ~~OFT's~~ CMA's website.¹⁹

19 ~~www.oft.gov.uk/advice-and-resources/resource-base/legal/enterprise-act/part8/~~ www.gov.uk/governmentorganisations

...

Financial Services (Distance Marketing) Regulations 2004

...

- 19.61 The *FCA* may apply to the courts for an injunction or interim injunction against a person who appears to it to be responsible for a breach of the Regulations. ~~The *FCA* must consult with the OFT before exercising this power.~~ The *FCA* may also accept undertakings from the person who committed the breach that he will comply with the Regulations. The *FCA* must publish details of any applications it makes for injunctions; the terms of any orders that the court subsequently makes; and the terms of any undertakings given to it or to the court.

...

The Consumer Protection Co-operation Regulation²²

- 19.66 The *FCA* is a competent authority under the CPC Regulation, which aims to encourage and facilitate co-operation between competent authorities across the EU in consumer protection matters. The *FCA* is a competent authority for the purposes of specified EU consumer protection laws²³ in the context of the regulated activities of authorised firms and of breaches by UK firms concerning “specified contracts” as defined in the Financial Services (Distance Marketing) Regulations 2004 (for which see paragraphs 19.60 to 19.62).

²³ These are the Unfair Terms in Consumer Contracts Directive; the Comparative and Misleading Advertising Directive; the E-Commerce Directive; the Distance

Marketing Directive; ~~and~~ the Unfair Commercial Practices Directive; and the Consumer Credit Directive.

...

After EG 19 insert the following new chapter. The text is not underlined.

20. Enforcement of the Consumer Credit Act 1974

20.1 *The CCA Order* gives the *FCA* the power to enforce the *CCA* through the application of its investigation and sanctioning powers in the *Act* by reference to the contravention of *CCA Requirements* and criminal offences under the *CCA*.

The *FCA*'s investigation and sanctioning powers include the following:

- power to censure or fine an approved person, or impose a suspension or a restriction on their approval under section 66 of the *Act*, for being knowingly concerned in a contravention by the relevant *authorised person* of a *CCA Requirement*;
- power to require information and documents, under section 165 of the *Act*, it reasonably requires in connection with the exercise of the functions conferred on it by the *CCA Order*;
- power to appoint an investigator under section 167 of the *Act* for reasons related to its functions under the *CCA Order*;
- power to appoint an investigator under section 168 of the *Act* where there are circumstances suggesting that an offence under the *CCA* may have been committed or that a person may have failed to comply with a *CCA Requirement*;
- power to impose a requirement under section 196 of the *Act* on an *incoming firm* by reference to the contravention or likely contravention of a *CCA Requirement*;
- power to censure (under section 205 of the *Act*) or fine (under section 206 of the *Act*) an authorised person, or impose a suspension or restriction on their permission (under section 206A of the *Act*) for the contravention of a *CCA Requirement*;
- power to apply to the court for an injunction under section 380 of the *Act* by reference to the contravention or likely contravention of a *CCA Requirement*;
- power to apply to the court for a restitution order under section 382 of the *Act* by reference to the contravention of a *CCA Requirement*;
- power to impose a restitution requirement under section 384 of the *Act* by reference to the contravention of a *CCA Requirement*; and
- power to prosecute under section 401 of the *Act* an offence committed under the *CCA*.

20.2 The *FCA*'s approach to taking enforcement action under the *CCA Order* will mirror its general approach to enforcing the *Act*, as set out in EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate,

responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

- 20.3 The *FCA* has decided to adopt procedures and policies that it currently has in place for the enforcement of the *Act* in exercising its powers to enforce the *CCA*. Key features of the *FCA*'s approach are described below.

Information gathering and investigation powers

- 20.4 The *CCA Order* applies much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating contraventions of the *CCA Requirements* and offences committed under the *CCA*.

- 20.5 The *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *CCA Order* and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA*'s policy in civil investigations under the *CCA Order* is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

Decision making under the CCA Order

- 20.6 The *RDC* is the *FCA*'s decision maker for decisions which require the giving of warning or decision notices under the *CCA Order*, as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3*.
- 20.7 The *CCA Order* does not require the *FCA* to publish procedures about its approach towards the commencement of criminal prosecutions. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act* as set out in *EG 12*.
- 20.8 The *CCA Order* does not require the *FCA* to publish procedures about its approach towards applications to the court for an injunction or restitution order. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act* as set out in *EG 10* and *EG 11*.
- 20.9 The *CCA Order* requires the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to material, as set out in section 394 of the *Act*, in relation to warning notices and decision notices given under the *CCA Order*.
- 20.10 The *CCA Order* applies the procedural provisions of Part 9 of the *Act*, as modified by the *CCA Order*, in respect of matters that can be referred to the Tribunal. Referrals to the Tribunal in respect of decision notices given under sections 67 (pursuant to article 3(3) of the *CCA Order*) and 208 (pursuant to article 3(7) of the

CCA Order) of the *Act* are treated as disciplinary referrals for the purpose of section 133 of the *Act*.

Public censures, imposition of penalties and the impositions of suspensions or restrictions in relation to contraventions of the Consumer Credit Act 1974

- 20.11 When determining whether to take action to impose a penalty or to issue a public censure in relation to the contraventions of a *CCA Requirement*, the *FCA's* policy includes having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. When determining the level of financial penalty, the *FCA's* policy includes having regard to relevant principles and factors in *DEPP 6.5* to *DEPP 6.5B*, *DEPP 6.5D* and *DEPP 6.7*.
- 20.12 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil contraventions of *CCA Requirements* to assist it to exercise its functions. *DEPP 5*, *DEPP 6.7* and *EG 5* set out information on the *FCA's* settlement process and the settlement discount scheme.
- 20.13 When determining whether to take action to impose a suspension or restriction in relation to the contraventions of *CCA Requirements*, the *FCA's* policy includes having regard to the relevant factors in *DEPP 6A.2* and *6A.4*. When determining the length of the period of suspension or restriction, the *FCA's* policy includes having regard to relevant principles and factors in *DEPP 6A.3*.
- 20.14 The *FCA* will apply the approach to publicity that is outlined in *EG 6*.

Prosecution of criminal offences under the Consumer Credit Act 1974

- 20.15 The *FCA's* policy with respect to the prosecution of criminal offences is set out in *EG 12* and applies to the prosecution of *CCA* offences under section 401 of the *Act*. The *FCA* will not prosecute a person for an offence under the *CCA* in respect of an act or omission where the *FCA* has already disciplined the person under section 66, 205, 206 or 206A of the *Act* in respect of that act or omission.

Annex P

Amendments to the Financial Crime Guide (FC)

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

Part 1

...

Annex 1: Common Terms

...

Term	Meaning
...	
occasional transaction	...
Office of Fair Trading (OFT)	The Office of Fair Trading has responsibilities under the Money Laundering Regulations 2007 to supervise many lenders and estate agents.
OFT	See ‘Office of Fair Trading’.
...	

Annex Q

Amendments to the Perimeter Guidance manual (PERG)

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

1.4.2 G Table: list of general guidance to be found in *PERG*.

Chapter:	Applicable to:	About:
...
<u>PERG 17: Consumer credit debt counselling</u>	<u>Any person who needs to know whether his activities in relation to debts will amount to debt counselling.</u>	<u>The scope of the regulated activities relating to consumer credit debt counselling.</u>

...

1.5.1 G General *guidance* on the perimeter is also contained in various *FCA* documents (mainly fact sheets and frequently asked questions) that are available on the *FCA* website at www.fca.org.uk. These documents, and the URL on which they may be accessed, include:

- (1) ~~*FCA* Guidance Note GN9 (2010) on financial regulation for social housing providers which is available at <http://www.fca.org.uk/your-fca/documents/fsa-guidance-9>; [deleted]~~

...

...

2.2.1 G Under section 23 of the *Act* (Contravention of the general prohibition or section 20 (1) or (1A)), a *person* commits a criminal offence if he carries on activities in breach of the *general prohibition* in section 19 of the *Act* (The general prohibition). An authorised person also commits a criminal offence if he carries on a credit-related regulated activity in the UK, or purports to do so, otherwise than in accordance with his permission (unless the person is an appointed representative carrying on the activity in circumstances where, as a result of section 39 (1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply). For these purposes, entering into a regulated credit agreement as lender, exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement and debt collecting are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the borrower to repay is secured on

land. Although a *person* who commits the criminal offence is subject to a maximum of two years imprisonment and an unlimited fine, it is a defence for a *person* to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

2.2.1A G A regulated credit agreement that is made by an authorised person who does not have permission to do so, in contravention of section 20 of the Act, could be unenforceable against the borrower (see section 26A of the Act).

...

...

2.2.3 G Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in *PERG 2 Annex 1 G*):

...

(3B) Are my activities related to information about a person's financial standing (see *PERG 2.7.20KG*)?

(4) If the answer is 'Yes' to (3), (3A) or (3B) ~~or (3a)~~, will my activities be, or include, *regulated activities* (see *PERG 2.7*)?

...

2.3 The business element

...

2.3.2 G There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things. They have exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476),¹ the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2005 (SI 2005/922), and the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 (SI 2011/2304) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013. The result is that the business element differs depending on the activity in question. This in part reflects certain differences in the nature of the activities:

...

(3B) If a not-for-profit body is carrying on debt adjusting, debt counselling or providing credit information services (or agreeing to

carry on a regulated activity so far as relevant to any of those activities), it is to be regarded as doing so by way of business. It is immaterial whether the *not-for-profit body* also carries on other activities. This change to the business element does not apply, however, if the *not-for-profit body* carries on that activity only on an occasional basis.

- (4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting or carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract, entering into a home finance transaction or administering a home finance transaction, and operating a dormant account fund and credit-related regulated activities carried on by persons other than not-for-profit bodies.*

...

2.3.4 G ...

Whether someone is carrying on his or her own business

2.3.5 G Another aspect of the *general prohibition* is that an employee will not breach the *general prohibition* by carrying on a *regulated activity* on behalf of his employer. The reason for that is that it is the employer who is carrying on that activity. The employee is simply carrying on the employer's business.

2.3.6 G This principle potentially also applies to agents and others who assist another to carry on that other's business. That does not mean however that agents and other such *persons* can never carry on a *regulated activity*. Apart from anything else it is clear that some *regulated activities* are meant to be carried on by such *persons*, such as *dealing in investments as agent*.

2.3.7 G In the *FCA's* view the following factors are relevant in deciding whether a *person* (referred to in this paragraph as "an individual") is to be treated as carrying on his own business (in which case he may require *authorisation unless an exemption or exclusion is available*) or whether he is carrying on the business of the *person* for whom he works (in which case he will not require *authorisation*). In this paragraph, the *person* for whom the individual works is referred to as the principal *firm*.

- (1) The degree of control the principal *firm* has over the individual (the greater the control the more likely it is that the *general prohibition* does not apply). This takes into account the power of deciding the tasks to be carried out, the way in which the tasks are to be done, the means to be employed in doing them and the time when and the place where they are to be done. For example, at one end of the spectrum the individual may merely agree to achieve an end result without that end result being specified in detail. At the other end of the spectrum, the individual may be controlled in every detail of how things are to be done.
- (2) The degree to which the individual is integrated into the principal *firm's* business (the greater the integration the more likely it is that the *general prohibition* does not apply). One may look at how much the individual is subject to the managerial procedures of the principal *firm* in relation to such matters as quality of work and performance.
- (3) The degree to which the individual takes on the financial risks and rewards of an independent business (the more the individual takes on such risks the more likely it is that the *general prohibition* does not apply). For example, one might take into account whether the individual provides his own equipment; whether he hires his own helpers; what degree of financial risk he takes; what degree of responsibility for investment and management he has; whether and how far he has an opportunity of profiting from sound management in the performance of his task.
- (4) For example, if the individual is tasked with finding customers it may be relevant whether he is paid a commission for each customer gained. However, commission is not a particularly strong factor as many conventional employees are paid by commission.
- (5) The degree to which the individual deals with the principal *firm's* customers in his own name (if the individual deals with customers in his own name that points towards the *general prohibition* applying). For example, it may be relevant whether the individual receives monies from the principal *firm's* customers into a bank account in the individual's name.
- (6) The degree to which the services supplied by the individual to the principal *firm* are ones that the individual supplies to other clients as well. If the individual supplies services to more than one client (principal *firm*), it is very likely that the individual is in the business of providing those services generally and that, as a result, he is carrying on his own business and hence needs *authorisation* or an exemption from the *general prohibition*.
- (7) Whether the individual is a natural *person*. It is unlikely that a company or a partnership will fall outside the *general prohibition* on the grounds in *PERG 2.3.6G*.

- 2.3.8 G In practice, a *person* is only likely to fall outside the *general prohibition* on the grounds that he is not carrying on his own business if he is an employee or performing a role very similar to an employee.
- 2.3.9 G Even though working for more than one *firm* is likely to mean that the *person* will not be able to rely on the grounds in *PERG* 2.3.6G to escape the *general prohibition* (see *PERG* 2.3.7G(6)), that will not always be the case. In particular, say that a *person* is acting as an employee of one *firm* (Firm A) and as a self-employed agent of another *firm* (Firm B). In his capacity as an employee of Firm A, the *person* would not be carrying on his own business. Thus, the *general prohibition* does not apply in relation to his work for Firm A. If the only *firm* for which that *person* acts on a self-employed basis is Firm B, he could still fall outside the *general prohibition* in relation to Firm B too. The situation would be different if he was providing services to, or on behalf of, more than one client *firm* on a self-employed basis as under such circumstances he would be likely to be carrying on his own business.
- 2.3.10 G One example in the consumer credit industry of how the factors in *PERG* 2.3.7G might apply can be found in the home collected credit sector. Home collected credit *firms* supply small, short-term, unsecured loans direct to customers in their homes. It is common practice in this sector for some of the larger *firms*, in particular, to deal with their customers via self-employed agents. Self-employed agents are not paid a salary by an employer. These agents call on customers in their homes to provide loans and/or collect repayments due on loans, on behalf of the home collected credit providers they represent, and they receive commission on the repayments they collect. Agents of home collected credit firms may:
- introduce new clients to the credit provider;
 - arrange for the completion of the relevant credit agreements by new clients; and
 - collect repayments.
- 2.3.11 G Although the overall relationship between a home collected credit provider (the principal *firm*) and a *person* providing the services described in *PERG* 2.3.10G (the individual) will need to be taken into account, meeting the following criteria is likely to mean that the individual is carrying on the business of the principal *firm* (as its agent) and not his own, meaning that the individual does not require *authorisation* or to be exempt:
- (1) the principal *firm* appoints the individual as an agent;
 - (2) the individual only works for one principal *firm*;
 - (3) the principal *firm* has a *permission* from the *FCA* for every activity the individual is carrying on for which the principal *firm* would need *permission* if it was carrying on the activity itself;

- (4) the contract sets out effective measures for the principal *firm* to control the individual;
- (5) (in the case of collecting debts) receipt of repayment by the individual is treated as receipt by the principal *firm* so that the debtor is not disadvantaged if the individual becomes insolvent before the money is passed to the principal *firm*;
- (6) the principal *firm* accepts full responsibility for the conduct of the individual when the individual is acting on the principal *firm*'s behalf in the course of its business; and
- (7) the individual makes clear to customers that it is representing a principal *firm* as its agent and the name of that principal *firm*.

...

...

2.4.8 G ...

2.4.9 G Whether a *credit agreement* or *consumer hire agreement* is subject to the law of a country outside the *United Kingdom* is immaterial to whether an activity is *credit broking*, see PERG 2.7.7EG.

...

2.5.1A G ...

2.5.1B G The activities of *providing credit information services* and *providing credit references* are not required to relate to a *specified investment* to be *regulated activities*, but rather relate to information about a *person's* financial standing.

...

...

2.6.29 G ...

Rights under a credit agreement and an article 36H agreement

2.6.30 G In accordance with article 60B (3) of the *Regulated Activities Order*, a *credit agreement* is an agreement between an *individual* ("A") and any other *person* ("B") under which B provides A with *credit* of any amount. In accordance with article 36H (10) of the *Regulated Activities Order*, rights

under an article 36H agreement are also *specified investments*. The definition of an article 36H agreement is set out in *PERG 2.7.7HG*.

Rights under a consumer hire agreement

2.6.31 G In accordance with article 60N(3) of the *Regulated Activities Order*, a *consumer hire agreement* is an agreement between a *person* (“the owner”) and an *individual* (“the hirer”) for the bailment or, in Scotland, the hiring, of *goods* to the hirer which:

- (1) is not a *hire-purchase agreement*; and
- (2) is capable of subsisting for more than three months.

...

2.7.7D G ...

Credit broking

2.7.7E G There are six activities that fall within *credit broking*. These are:

- (1) effecting an introduction of an *individual* who wishes to enter into a *credit agreement* to another *person*, with a view to that *person* entering as *lender* into a *credit agreement* by way of business;
- (2) effecting an introduction of an *individual* who wishes to enter into a *consumer hire agreement* to another *person*, with a view to that *person* entering as *owner* into a *consumer hire agreement* by way of business (except where the exemption relating to the supply of essential services would apply to the *consumer hire agreement*, see *PERG 2.7.19OG*);
- (3) effecting an introduction of an *individual* who wishes to enter into a *credit agreement* or a *consumer hire agreement* to a *person* who carries on an activity in (1) or (2) by way of business;
- (4) presenting or offering an agreement which would (if entered into) be a *credit agreement*;
- (5) assisting an *individual* by undertaking preparatory work with a view to that *person* entering into a *credit agreement*;
- (6) entering into a *credit agreement* on behalf of a *lender*.

2.7.7F G An activity is not *credit broking* within *PERG 2.7.7EG*(1), (4), (5) or (6) if the exemption relating to the number of repayments to be made would apply to the *credit agreement*, see *PERG 2.7.19GG*.

2.7.7G G An activity is also not *credit broking* within PERG 2.7.7EG(1) to (6) in so far as the activity is *operating an electronic system in relation to lending*, see PERG 2.7.7HG.

Operating an electronic system in relation to lending

2.7.7H G (1) This activity is aimed at what are sometimes referred to as peer-to-peer lending platforms. A person (“A”) will be *operating an electronic system in relation to lending* if he operates an electronic system which enables him to facilitate *persons* (“B” and “C”) becoming the *lender* and *borrower* under an article 36H agreement.

(2) To be caught, all of the following conditions must be met:

(a) the electronic system operated by A must be capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise);

(b) A, or another *person* (“X”) acting under an arrangement with A or at A’s direction, undertakes to:

(i) receive payments in respect of interest and capital due under the article 36H agreement from C; and

(ii) make payments in respect of interest and capital due under the article 36H agreement to B; and

(c) A, or another *person* (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another *person* to perform either or both of the following activities:

(i) taking steps to procure the payment of a debt under the article 36H agreement;

(ii) exercising or enforcing rights under the article 36H agreement on behalf of B.

(3) For the purposes of (2)(b):

(a) an agreement by A to appoint X to perform the activities is to be treated as an undertaking by A; and

(b) it is immaterial that:

(i) payments may be subject to conditions;

(ii) A, or X, may be entitled to retain a portion or the

entirety of any payment received from C.

- (4) An article 36H agreement is an agreement by which one *person* provides another *person* with *credit* and either:
- (a) the lender is an *individual*; or
 - (b) the borrower is an *individual*; and
 - (i) the amount of *credit* provided is less than or equal to £25,000; or
 - (ii) the agreement is not entered into by the *borrower* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *borrower*. If the agreement includes a declaration by the borrower that it is entered into by the borrower wholly or predominantly for business purposes, this may create a presumption that this is the case (see *PERG 2.7.19DG*).
- (5) An agreement may be an article 36H agreement and not a *credit agreement*, for example if it is an agreement by which an *individual* provides *credit* to a company. An agreement may, equally, be both an article 36H agreement for the purposes of *operating an electronic system in relation to lending* and a *credit agreement* for the purposes of other *credit-related regulated activities* if it is within the relevant definitions.
- (6) It is immaterial whether the *lender* is carrying on a *regulated activity*.
- (7) The following activities are also caught by *operating an electronic system in relation to lending* if carried on by the operator in the course of, or in connection with, the activity in (1):
- (a) presenting or offering article 36H agreements to B and C with a view to B becoming the *lender* under the article 36H agreement and C becoming the *borrower* under the article 36H agreement;
 - (b) furnishing information relevant to the financial standing of a *person* to assist a potential *lender* to determine whether to provide *credit* to that person under an article 36H agreement;
 - (c) taking steps to procure the payment of a debt due under an article 36H agreement;
 - (d) performing duties, or exercising or enforcing rights under an article 36H agreement on behalf of the *lender*;
 - (e) ascertaining whether a *credit information agency* holds

information relevant to the financial standing of an individual;

- (f) ascertaining the contents of such information;
- (g) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information; or
- (h) securing that a credit information agency which holds such information stops holding the information, or does not provide it to any other person.

...

Debt adjusting

2.7.8B G This activity comprises:

- (1) negotiating with the lender or owner, on behalf of the borrower or hirer, terms for the discharge of a debt;
- (2) taking over, in return for payments by the borrower or hirer, that person's obligation to discharge a debt; or
- (3) any similar activity concerned with the liquidation of a debt;

when carried on in relation to debts due under a credit agreement or consumer hire agreement.

Debt-counselling

2.7.8C G Giving advice to a borrower about the liquidation of a debt due under a credit agreement is a regulated activity. Giving advice to a hirer about the liquidation of a debt due under a consumer hire agreement is a regulated activity. See PERG 17 for further guidance on debt-counselling.

Debt-collecting

- 2.7.8D G
- (1) Taking steps to procure the payment of a debt due under a credit agreement or a consumer hire agreement is a regulated activity.
 - (2) Taking steps to procure the payment of a debt due under an article 36H agreement (see PERG 2.7.7HG(3)) which has been entered into with the facilitation of an operator of an electronic system in relation to lending is also a regulated activity.
 - (3) The activity is not a regulated activity in so far as the activity is operating an electronic system in relation to lending (article 36H of the Regulated Activities Order) see PERG 2.7.7HG.

Debt administration

- 2.7.8E G (1) Taking steps to perform duties or to exercise or to enforce rights under a *credit agreement* or a *consumer hire agreement* on behalf of the *lender* or *owner* is a *regulated activity*.
- (2) Taking steps to perform duties or to exercise or to enforce rights under an article 36H agreement (see *PERG 2.7.7HG(3)*) which has been entered into with the facilitation of an *operator of an electronic system in relation to lending* is also a *regulated activity*.
- (3) In so far as the activity is *operating an electronic system in relation to lending* (article 36H of the *Regulated Activities Order*, see *PERG 2.7.7HG*) or *debt-collecting* (article 39F of the *Regulated Activities Order*) it is not also *debt administration*.

...

Regulated credit agreements

- 2.7.19A G (1) Entering into a *regulated credit agreement as lender* is a *regulated activity*.
- (2) It is also a *regulated activity* for the *lender* or another *person* to exercise, or to have the right to exercise, the *lender's* rights and duties under a *regulated credit agreement*.

Exempt agreements

- 2.7.19B G A *credit agreement* is not a *regulated credit agreement* for the purposes of *PERG 2.7.19AG* if it is an *exempt agreement*. *PERG 2.7.19CG* to *PERG 2.7.19JG* describe the categories of *exempt agreement*.

Exemptions relating to the nature of the agreement

- 2.7.19C G A *credit agreement* is an *exempt agreement* in the following cases:
- (1) if it is a *regulated mortgage contract* or a *home purchase plan*;
- (2) if:
- (a) the *lender* provides the *borrower* with *credit* exceeding £25,000;
 and
- (b) the agreement is entered into by the *borrower* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *borrower*;
- (3) if:
- (a) the *lender* provides the *borrower* with *credit* of £25,000 or less;
 and

- (b) the agreement is entered into by the *borrower* wholly for the purposes of a business carried on, or intended to be carried on, by the *borrower*; and
 - (c) the agreement is a *green deal plan*;
 - (4) if it is made in connection with trade in goods or services:
 - (a) between the *United Kingdom* and a country outside the *United Kingdom*; or
 - (b) within a country outside the *United Kingdom*; or,
 - (c) between countries outside the *United Kingdom*; and
- the *credit* is provided to the *borrower* in the course of a business carried on by the *borrower*.

2.7.19D G If a *credit agreement* includes a declaration which:

- (1) is made by the *borrower*;
- (2) provides that the agreement is entered into by the *borrower* wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the *borrower*; and
- (3) complies with the *rules* in *CONC App 1.4*;

the *credit agreement* is to be presumed to have been entered into by the *borrower* wholly or predominantly for business purposes. This presumption does not apply, however, if the *lender* or any *person* who has acted on behalf of the *lender* knows or has reasonable cause to suspect that the agreement is not entered into by the *borrower* wholly or predominantly for business purposes. This also applies to the exemption in *PERG 2.7.19CG(3)*, as if the word “predominantly” were omitted.

Exemption relating to the purchase of land for non-residential purposes

2.7.19E G A *credit agreement* is an *exempt agreement* if, at the time it is entered into:

- (1) any sums due under it are secured by a *legal or equitable mortgage* on *land*; and
- (2) less than 40% of the *land* is used, or is intended to be used, as or in connection with a dwelling:
 - (a) by the *borrower* or a related person of the *borrower*; or
 - (b) in the case of *credit* provided to trustees, by an individual who is a beneficiary of the trust or a related person of a beneficiary.
- (3) For these purposes, a person is related to a *borrower* or a beneficiary

of a trust if they are a spouse or civil partner, or a parent, brother, sister, child, grandparent or grandchild of the *borrower* or beneficiary or if their relationship with the *borrower* or beneficiary has the characteristics of the relationship between husband and wife.

- (4) This exemption is intended to mirror the definition of *regulated mortgage contract* so that buy-to-let loans (that are not secured by a legal mortgage on the *borrower's* or a related person's residence) are not regulated either as *regulated mortgage contracts* or as *regulated credit agreements*.

Exemptions relating to the nature of the lender

2.7.19F G A credit agreement is an exempt agreement in the following cases:

- (1) if the credit agreement is a relevant credit agreement relating to the purchase of land and the lender is a local authority;
- (2) if the credit agreement is a relevant credit agreement relating to the purchase of land specified in CONC App 1.3 and the lender is a person or within a class of persons specified in CONC App 1.3;
- (3) if the credit agreement is secured by a legal or equitable mortgage on land, that land is used or is intended to be used as, or in connection with, a dwelling and the lender is a housing authority; or
- (4) If the lender is an investment firm or a credit institution, and the agreement is entered into for the purpose of allowing the borrower to carry out a transaction relating to one or more financial instruments.

Exemptions relating to number of repayments to be made

2.7.19G G A credit agreement is also an exempt agreement in the following cases:

- (1) if (subject to PERG 2.7.19HG):
- (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit;
- (b) the number of payments to be made by the borrower is not more than four;
- (c) those payments are required to be made within a period of 12 months or less (beginning on the date of the agreement); and
- (d) the credit is:
- (i) secured on land; or
- (ii) provided without interest or other charges;
- (2) if (subject to PERG 2.7.19HG):

- (a) the agreement is a *borrower-lender-supplier agreement for running-account credit*;
 - (b) the *borrower* is to make payments in relation to specified periods which must be, unless the agreement is secured on *land*, of three months or less;
 - (c) the number of payments to be made by the *borrower* in repayment of the whole amount of *credit* provided in each period is not more than one; and
 - (d) the *credit* is:
 - (i) secured on *land*; or
 - (ii) provided without interest or other significant charges;
- (3) if:
- (a) the agreement is a *borrower-lender-supplier agreement financing the purchase of land*;
 - (b) the number of payments to be made by the *borrower* is not more than four; and
 - (c) the *credit* is:
 - (i) secured on *land*; or
 - (ii) provided without interest or other charges;
- (4) if:
- (a) the agreement is a *borrower-lender-supplier agreement for fixed-sum credit*;
 - (b) the *credit* is to finance a *premium* under a *contract of insurance* relating to *land* or anything on *land* (for example, house or contents insurance);
 - (c) the *lender* is the *lender* under a *credit agreement* secured by a *legal or equitable mortgage* on that *land*;
 - (d) the *credit* is to be repaid within the period (which must be 12 months or less) to which the *premium* relates;
 - (e) in the case of an agreement secured on *land*, there is no charge forming part of the *total charge for credit* under the agreement (see *CONC App 1*) other than interest at a rate not exceeding the rate of interest payable under the mortgage loan in (c);
 - (f) in the case of an agreement which is not secured on *land*, the

credit is provided without interest or other charges; and

- (g) the number of payments to be made by the *borrower* is not more than 12;
- (5) if:
 - (a) the agreement is a *borrower-lender-supplier agreement* for *fixed-sum credit*;
 - (b) the *lender* is the *lender* under a *credit agreement* secured by a *legal or equitable mortgage on land*;
 - (c) the agreement is to finance a premium under a life insurance policy that meets certain conditions;
 - (d) in the case of an agreement secured on *land*, there is no charge forming part of the *total charge for credit* under the agreement (see *CONC App 1*) other than interest at a rate not exceeding the rate of interest payable under the mortgage loan in (b);
 - (e) in the case of an agreement which is not secured on *land*, the *credit* is provided without interest or other charges; and
 - (f) the number of payments to be made by the *borrower* is not more than 12.

2.7.19H G The exemptions in *PERG 2.7.19GG* (1) and (2) do not apply to:

- (1) *credit agreements* financing the purchase of *land*;
- (2) *conditional sale agreements* or *hire-purchase agreements*; or
- (3) *credit agreements* secured by a pledge (other than a pledge of documents of title or of bearer bonds).

Exemptions relating to the total charge for credit

2.7.19I G A *credit agreement* is also an *exempt agreement* in the following cases:

- (1) if it is a *borrower-lender agreement*, the *lender* is a *credit union* and the rate of the *total charge for credit* (see *CONC App 1*) does not exceed 42.6 per cent;
- (2) if (subject to (5) and (6)):
 - (a) it is a *borrower-lender agreement*;
 - (b) it is offered to a particular class of *individual* and not offered to the public generally;
 - (c) it provides that the only charge included in the *total charge for*

credit (see CONC App 1) is interest; and

- (d) interest under the agreement may not, at any time, be more than the sum of one per cent and the highest of the base rates published by the banks in (4) on the date 28 days before the date on which the interest is charged;
- (3) if (subject to (5) and (6)):
- (a) it is a borrower-lender agreement;
 - (b) it is an agreement of a kind offered to a particular class of individual and not offered to the public generally;
 - (c) it does not provide for or permit an increase in the rate or amount of any item which is included in the total charge for credit (see CONC App 1); and
 - (d) the total charge for credit under the agreement is not more than the sum of one per cent and the highest of the base rates published by the banks in (4) on the date 28 days before the date on which the charge is imposed;
- (4) the banks (referred to in (3)(d)) are:
- (a) the Bank of England;
 - (b) Bank of Scotland;
 - (c) Barclays Bank plc;
 - (d) Clydesdale Bank plc;
 - (e) Co-operative Bank Public Limited Company;
 - (f) Coutts & Co;
 - (g) National Westminster Bank Public Limited Company;
 - (h) the Royal Bank of Scotland plc;
- (5) the exemptions in (2) and (3) do not apply, however, if the total amount to be repaid by the borrower may vary according to a formula which is specified in the agreement and which has effect by reference to movements in the level of any index or other factor;
- (6) unless the agreement:
- (a) is secured on land; or
 - (b) is offered by a lender who is an employer to a borrower as an incident of employment with the lender;
- the exemptions in (2) and (3) apply only if:
- (c) the agreement is offered under an enactment with a general

interest purpose; and

- (d) the terms on which the *credit* is provided are more favourable to the *borrower* than those prevailing on the market, either because the rate of interest is lower than that prevailing on the market or because the rate of interest is no higher than that prevailing on the market, but the other terms on which *credit* is provided are more favourable to the *borrower*.

High net worth exemption

2.7.19J G A *credit agreement* is an *exempt agreement* if:

- (1) the *borrower* is an individual;
- (2) the agreement is either secured on *land* or for *credit* which exceeds £60,260;
- (3) the agreement includes a declaration, made by the *borrower* which provides that the *borrower* agrees to forgo the protection and remedies that would be available to the borrower if the agreement were a *regulated credit agreement*, which complies with CONC App 1.4;
- (4) a statement has been made in relation to the income or assets of the *borrower* which complies with CONC App 1.4; and
- (5) the connection between that statement and the *credit agreement* complies with CONC App 1.4; and
- (6) a copy of that statement was provided to the *lender* before the agreement was entered into.

Regulated consumer hire agreements

2.7.19K G (1) Entering into a *regulated consumer hire agreement* as owner is a *regulated activity*.

- (2) It is also a *regulated activity* for the *owner* or another *person* to exercise, or to have the right to exercise, the *owner's* rights and duties under a *regulated consumer hire agreement*.

Exempt agreements

2.7.19L G A *consumer hire agreement* is not a *regulated consumer hire agreement* for the purposes of PERG 2.7.19KG if it is an *exempt agreement*. PERG 2.7.19MG to PERG 2.7.19PG describe the categories of *exempt agreement*.

Exemptions relating to nature of agreement

2.7.19M G A *consumer hire agreement* is an *exempt agreement* if the *hirer* is required by the agreement to make payments exceeding £25,000, and the agreement is entered into by the *hirer* wholly or predominantly for the purposes of a

business carried on, or intended to be carried on, by the *hirer*.

2.7.19N G As in the case of a *credit agreement* (see *PERG 2.7.19DG*), if a *consumer hire agreement* includes a declaration which:

- (1) is made by the *hirer*;
- (2) provides that the agreement is entered into by the *hirer* wholly or predominantly for business purposes; and
- (3) complies with *CONC App 1.4*;

the *consumer hire agreement* is to be presumed to have been entered into by the *hirer* for business purposes. This presumption does not apply, however, if the *owner* or any *person* who has acted on behalf of the *owner* knows, or has reasonable cause to suspect, that the agreement is not entered into by the *hirer* for business purposes.

Exemption relating to supply of essential services

2.7.19O G A *consumer hire agreement* is an *exempt agreement* if the *owner* is a body corporate which supplies gas, electricity or water under an enactment and the subject of the agreement is a meter or metering equipment which is used in connection with that purpose.

High net worth exemption

2.7.19P G This exemption is substantially the same as the one for *credit agreements* in *PERG 2.7.19JG*.

...

Providing credit information services

2.7.20K G (1) Taking any of the steps in (2) on behalf of an *individual* is a *regulated activity*.

- (2) This activity catches steps taken with a view to:
 - (a) ascertaining whether a *credit information agency* holds information relevant to the financial standing of an *individual*;
 - (b) ascertaining the contents of such information;
 - (c) securing the correction of, the omission of anything from, or the making of, any other kind of modification of, such information; or
 - (d) securing that a *credit information agency* which holds such information stops holding the information or does not provide it to any other *person*.

- (2) Giving advice to an individual in relation to the taking of any of the steps in PERG 2.7.20KG(1)(a) to (d) is also a regulated activity.
- (3) A credit information agency that takes any of the steps in PERG 2.7.20KG(1) (a) to (d) in relation to information held by that agency does not provide credit information services.
- (4) In so far as taking any of the steps in PERG 2.7.20KG(1)(a) to (d) is the activity of operating an electronic system in relation to lending, then it is not also providing credit information services.

Providing credit references

- 2.7.20L G (1) Furnishing of persons with information relevant to the financial standing of individuals is a regulated activity if the person has collected the information for that purpose.
- (2) A person requires authorisation for this activity only if its business primarily consists of the activities in (1).
- (3) This activity does not include an activity in so far as it is operating an electronic system in relation to lending.

...

...

- 2.8.2 G ~~Two~~ Three exclusions apply to the regulated activity of accepting deposits. The first is that a deposit taker providing its services as an *electronic commerce activity* from another EEA State into the United Kingdom (see PERG 2.9.18G) does not carry on a regulated activity. The second relates to a firm with a Part 4A permission to manage an AIF or manage a UCITS (see PERG 2.9.22G (Managers of UCITS and AIFs)). There is also excluded from accepting deposits any activity which is carried on by a local authority (see PERG 2.9.23G). In addition to the situations that are excluded from being 'deposits' (see PERG 2.6.2G to PERG 2.6.4G), several persons are exempt persons in relation to the regulated activity of accepting deposits (see PERG 2.10.8G(2)).

...

- 2.8.4 G The regulated activity of dealing in investments as principal applies to specified transactions relating to any security or to any contractually based investment (apart from rights under funeral plan contracts or rights to or interests in such contracts). The activity is cut back by exclusions as follows:

...

- (6) A person will not be treated as carrying on the activity of dealing in

investments as principal if, in specified circumstances (outlined in *PERG 2.9*), he enters as principal into a transaction:

...

- (h) where it is in connection with or for the purposes of *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G (Managers of UCITS and AIFs)*);
- (i) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

...

...

2.8.5 G The *regulated activity of dealing in investments as agent* applies to specified transactions relating to any *security* or to any *relevant investment* (apart from rights under *funeral plan contracts* or rights to or interests in such rights). In addition, the activity is cut back by exclusions as follows:

...

- (3) In addition, exclusions apply in specified circumstances (outlined in *PERG 2.9 (Regulated activities: exclusions available in certain circumstances)*) where a *person* enters as agent into a transaction:

...

- (k) where it is in connection with or for the purposes of *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G (Managers of UCITS and AIFs)*);
- (l) as a *local authority* in relation to certain *contracts of insurance* (see *PERG 2.9.23G*);
- (m) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

...

...

2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows:

...

- (13) The following exclusions from both article 25(1) and (2) (outlined in *PERG 2.9*) apply in specified circumstances where a *person* makes arrangements:

...

- (m) in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs));
- (n) as a local authority in relation to certain contracts of insurance (see *PERG 2.9.23G*);
- (o) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

The exclusions referred to in (a), (b), (g), (h), ~~and~~ (m) and (n) also apply to *arranging* activities related to *home finance transactions* (in that context, the exclusion in (n) covers any activity which is carried on by a local authority). More detailed *guidance* on the exclusions that relate to *contracts of insurance* is in *PERG 5* (Insurance mediation activities).

...

Credit broking

2.8.6C G The following activities are excluded from the regulated activity of credit broking:

Introducing by individuals in the course of canvassing off trade premises

- (1) Activities carried on by an individual by *canvassing off trade premises*:
 - (a) a restricted-use credit agreement to finance a transaction between the lender or a member of the lender's group and the borrower; or
 - (b) a regulated consumer hire agreement;

are excluded from credit broking, as long as the individual does not carry on any other activity in *PERG 2.7.7EG*(1) to (3).

Activities for which no fee is paid

- (2) The activities in *PERG 2.7.7EG*(4) to (6) carried on by a person for which that person does not receive a fee are excluded from credit broking.

Transaction to which the broker is a party

- (3) Activities carried on by a person in relation to a credit agreement or a consumer hire agreement into which that person enters or is to enter as lender or owner are excluded from credit broking.

Activities in relation to certain agreements relating to land

- (4) Activities carried on with a view to an individual entering into a regulated mortgage contract are excluded from credit broking if the person carrying on the activity is an authorised person who has permission to:
- (a) enter into a regulated mortgage contract as lender (see PERG 4.7); or
 - (b) make an introduction to an authorised person who has permission to enter into a regulated mortgage contract as lender (see PERG 4.5 on arranging regulated mortgage contracts).
- (5) Activities carried on with a view to an individual entering into a home purchase plan are excluded from credit broking if the person carrying on the activity is an authorised person who has permission to:
- (a) enter into a home purchase plan as home purchase provider (see PERG 14.4); or
 - (b) make arrangements for a client to enter into a home purchase plan as home purchaser by introducing the client to an authorised person who has permission to enter into a home purchase plan as home purchase provider (see PERG 14.4).

Activities carried on by members of the legal profession

- (6) Activities carried on by:
- (a) a barrister or advocate acting in that capacity;
 - (b) a solicitor acting in the course of contentious business;
 - (c) a person acting in the course of contentious business who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;

are excluded from credit broking. For these purposes, business done in, or for the purposes of, proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business, is contentious business.

Other exclusions

- (7) The exclusions for electronic commerce activities by an incoming ECA provider (see PERG 2.9.18G) and activities carried on by local authorities (see PERG 2.9.23G) also apply to credit broking.

Operating an electronic system in relation to lending

- 2.8.6D G (1) An activity of a kind specified below is excluded from the *regulated activity of operating an electronic system in relation to lending*.
- (a) *dealing in investments as principal*;
 - (b) *arranging (bringing about) deals in investments*;
 - (c) *making arrangements with a view to transactions in investments*;
 - (d) *managing investments*;
 - (e) *advising on investments*.
- (2) The exclusion for *electronic commerce activities by an incoming ECA provider* (see *PERG 2.9.18G*) also applies to the *regulated activity of operating an electronic system in relation to lending*.

Managing investments

- 2.8.7 G The activities of *persons* appointed under a power of attorney are excluded under article 38 of the *Regulated Activities Order*, from the *regulated activity of managing investments*, if specified conditions are satisfied. The exclusion only applies where a *person* is not carrying on *insurance mediation* or *reinsurance mediation* and is subject to further limitations discussed below. In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a *person* manages assets:

...

- (6) in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs)); or
- (7) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

...

...

- 2.8.7B G The following exclusions from *assisting in the administration and performance of a contract of insurance* also apply to a *person* in specified circumstances:

...

- (7) where it is in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G*

(Managers of UCITS and AIFs)); or

(8) as a local authority in relation to certain contracts of insurance (see PERG 2.9.23G); or

(9) while acting as an insolvency practitioner (see PERG 2.9.25G).

Debt adjusting, debt counselling, debt collecting and debt administration

2.8.7C G (1) Activities carried on by:

(a) the lender or owner under the agreement;

(b) the supplier in relation to the credit agreement;

(c) a credit broker who has acquired the business of the person who was the supplier in relation to the credit agreement; or

(d) a person who would be a credit broker but for the exclusion in PERG 2.8.6CG(1) where the agreement was made in consequence of an introduction (by that person or another person) to which that exclusion applies;

are excluded from the regulated activities of debt adjusting, debt counselling and debt collecting.

(2) Steps taken under, or in relation to, an agreement by any of the persons in (1) are excluded from being debt administration.

(3) Activities carried on by a relevant energy supplier in relation to debts due under a green deal plan associated with the supplier are excluded from being debt adjusting, debt counselling, debt collecting or debt administration. A green deal plan is associated with a supplier if the payments under the plan are to be made to the supplier.

(4) There is also an exclusion from debt adjusting, debt counselling, debt collecting and debt administration for any activity that relates to a regulated mortgage contract or a home purchase plan to the extent that the activity constitutes a regulated activity (other than only debt adjusting, debt counselling, debt collecting and debt administration), where entering into that contract as lender constitutes entering into a regulated mortgage contract or entering into that home purchase plan as provider constitutes entering into a home purchase plan.

(5) Activities carried on by:

(a) a barrister or advocate acting in that capacity;

(b) a solicitor acting in the course of contentious business;

(c) a person acting in the course of contentious business who, for the purposes of the Legal Services Act 2007, is authorised to

exercise a right of audience or conduct litigation;

are excluded from *debt adjusting, debt counselling, debt collecting and debt administration*. For these purposes, contentious business means business done in, or for the purposes of, proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business.

- (6) The exclusions relating to *electronic commerce activities* by an *incoming ECA provider* (see *PERG 2.9.18G*) and for activities carried on by a *local authority* (see *PERG 2.9.23G*) or an *insolvency practitioner* (see *PERG 2.9.25G*) also apply to these *regulated activities*.

Safeguarding and administering investments

- 2.8.8 G The exclusions from the *regulated activity* of *safeguarding and administering investments* are as follows:
- ...
- (4) The following exclusions apply in specified circumstances where a *person* safeguards and administers assets (or arranges for another to do so):
- ...
- (h) belonging to the participants in a business angel-led enterprise capital fund, but only where such safeguarding and administration is carried on by a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*; ~~and~~
- (i) in connection with or for the purposes of *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission* to *manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs)); and
- (j) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

Sending dematerialised instructions

- 2.8.9 G Exclusions from the *regulated activity* of *sending dematerialised instructions* apply in relation to certain types of instructions sent in the operation of the system maintained under the Uncertificated Securities Regulations 2001 (SI 2001/3755). The various exclusions relate to the roles played by participating issuers, settlement *banks* and network providers (such as Internet service providers) and to instructions sent in connection with takeover offers (as long as specified conditions are met). In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a *person* sends dematerialised instructions:

...

- (4) where it is in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the person has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs));
- (5) while acting as an insolvency practitioner (see *PERG 2.9.25G*).

Managing a UCITS, managing an AIF and establishing etc collective investment schemes

- 2.8.10 G (1) The exclusion for *incoming ECA providers* (see *PERG 2.9.18G*) applies to the range of activities specified as being regulated in relation to *AIFs* and *collective investment schemes* (see *PERG 2.7.13AG*). The exclusion for business angel-led capital funds (see *PERG 2.9.20G*) applies to the activities of *managing an AIF*, *managing a UCITS* and *establishing, operating and winding up a collective investment scheme*. There is a third exclusion for insolvency practitioners (see *PERG 2.9.25G*).

...

Establishing etc pension schemes

- 2.8.11 G ~~Two~~ Three exclusions apply to the range of activities specified as being regulated in relation to *stakeholder pension schemes* and *personal pension schemes*. The first relates to *incoming ECA providers* (see *PERG 2.9.18G*). The second relates to *firms* with a *Part 4A permission to manage an AIF* or *manage a UCITS* (see *PERG 2.9.22G* (Managers of UCITS and AIFs)). The third relates to insolvency practitioners (see *PERG 2.9.25G*).

...

- 2.8.12A G Advice given by an *unauthorised person* in relation to a *home finance transaction* in the circumstances referred to in *PERG 2.8.6AG*(5)(a) or (b) (Arranging deals in investments and arranging a home finance transaction) is also excluded. In addition:

- (1) the following exclusions apply in specified circumstances where a person is *advising on investments* or *advising on a home finance transaction*:

...

- (c) as an *incoming ECA provider* (see *PERG 2.9.18G*); ~~and~~
- (d) where it is in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the person has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G* (Managers of UCITS and AIFs)); and

(e) as a local authority (in the case of advising on investments, in relation to certain contracts of insurance) (see PERG 2.9.23G);

(2) the following exclusions apply in specified circumstances where a person is *advising on investments*:

...

(g) to be made by or on behalf of the participants of a business angel-led enterprise capital fund, when the advice is given to the participants in that fund and that person is as specified in article 72E(7) of the *Regulated Activities Order*;

(h) while acting as an insolvency practitioner (see PERG 2.9.25G).

...

2.8.14B G The following exclusions apply in specified circumstances where a *person* is administering a *home finance transaction*:

...

(3) as an *incoming ECA provider* (see PERG 2.9.18G); ~~and~~

(4) in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission* to *manage a UCITS* or *manage an AIF* (see PERG 2.9.22G (Managers of UCITS and AIFs)); and

(5) if the *person* is a local authority (see PERG 2.9.23G).

Regulated credit agreements

2.8.14Z G A *person* who is not an *authorised person* and exercises, or has the right to exercise, the *lender's* rights and duties under a *regulated credit agreement* does not require *authorisation* to do so where he:
A

(1) arranges for another *person* to do so and the other *person* is an *authorised person* with *permission* to carry on that *regulated activity*;

(2) does so for up to one month after an arrangement of the kind in (1) comes to an end; or

(3) does so under an *agreement* with an *authorised person* who has *permission* to carry on that *regulated activity*.

2.8.14Z G Activities carried on by an *EEA authorised payment institution* or an *EEA authorised electronic money institution* exercising passport rights in the *United Kingdom* in accordance with article 16(3) of the *Payment Services Directive* (in the latter case, as applied by article 6 of the *Electronic Money Directive*) are excluded from the *regulated activities* of *entering into a*
B

regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement.

- 2.8.14Z C G (1) The exclusion for *electronic commerce activities* by an *incoming ECA provider* (see *PERG 2.9.18G*) applies to entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement.
- (2) There is also an exclusion from *entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* for any activity carried on by a *local authority* in so far as the *credit agreement* is of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive (see *PERG 2.9.23G*).

Regulated consumer hire agreements

- 2.8.14Z D G (1) The exclusions for *electronic commerce activities* provided by an *incoming ECA provider* and an activity carried on by a *local authority* (see *PERG 2.9.23G*) also apply to the regulated activities of entering into a regulated consumer hire agreement as owner and exercising, or to having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement.

...

Providing credit information services or credit references

- 2.8.14C G (1) The exclusions relating to activities carried on by members of the *legal profession* (see *PERG 2.8.6CG(6)*), and to *electronic commerce activities* by an *incoming ECA provider* (see *PERG 2.9.18G*) apply to providing credit information services and providing credit references.
- (2) The exclusions for activities carried on by a *local authority* (see *PERG 2.9.23G*) and *insolvency practitioners* (see *PERG 2.9.25G*) also apply to providing credit information services.

...

...

Local authorities

- 2.9.23 G This group of exclusions applies, in specified circumstances, to the regulated activities of:
- (1) *accepting deposits*;
- (2) *dealing in investments as agent*;

- (3) arranging (bringing about) deals in investments;
- (4) making arrangements with a view to transactions in investments;
- (5) arranging (bringing about) regulated mortgage contracts;
- (6) making arrangements with a view to regulated mortgage contracts;
- (7) arranging (bringing about) a home reversion plan;
- (8) making arrangements with a view to a home reversion plan;
- (9) arranging (bringing about) a home purchase plan;
- (10) making arrangements with a view to a home purchase plan;
- (11) arranging (bringing about) a regulated sale and rent back agreement;
- (12) making arrangements with a view to a regulated sale and rent back agreement;
- (13) credit broking;
- (14) assisting in the administration and performance of a contract of insurance;
- (15) debt adjusting;
- (16) debt counselling;
- (17) debt collecting;
- (18) debt administration;
- (19) advising on investments;
- (20) advising on regulated mortgage contracts;
- (21) advising on a home reversion plan;
- (22) advising on a home purchase plan;
- (23) advising on a regulated sale and rent back agreement;
- (24) entering into a regulated credit agreement as lender;
- (25) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement;
- (26) entering into a regulated consumer hire agreement as owner;

- (27) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement;
- (28) entering into a regulated mortgage contract;
- (29) administering a regulated mortgage contract;
- (30) entering into a home reversion plan;
- (31) administering a home reversion plan;
- (32) entering into a home purchase plan;
- (33) administering a home purchase plan;
- (34) entering into a regulated sale and rent back agreement;
- (35) administering a regulated sale and rent back agreement;
- (36) providing credit information services.

2.9.24 G (1) Subject to (2) and (3), the exclusions apply, in relation to any activity carried on by a local authority.

- (2) The exclusion relating to the regulated activities of:
 - (a) dealing in investments as agents;
 - (b) arranging (bringing about) deals in investments;
 - (c) making arrangements with a view to transactions in investments;
 - (d) assisting in the administration and performance of a contract of insurance; and
 - (e) advising on investments;

applies to any activity carried on by a local authority which relates to a contract of insurance which is not a life policy.

- (3) The exclusion relating to entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement applies only to credit agreements of a kind to which the Consumer Credit Directive does not apply under article 2(2) of that Directive. In summary, these include credit agreements:
 - (a) which are secured by a legal or equitable mortgage on land;
 - (b) the purpose of which is to acquire or retain property rights in land or in an existing or prospective building;

- (c) involving a total amount of credit less than £160 or more than £60,260;
- (d) which are *hire-purchase agreements*, where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement (such an obligation is deemed to exist if it is so decided unilaterally by the *lender*);
- (e) in the form of an *overdraft facility* and where the *credit* has to be repaid within one month;
- (f) where the *credit* is granted free of interest and without any other charges;
- (g) under which the *credit* has to be repaid within three months and only insignificant charges are payable;
- (h) where the *credit* is granted by an employer to his employees as a secondary activity free of interest or at an *APR* lower than those prevailing on the market and which are not offered to the public generally;
- (i) which are the outcome of a settlement reached in court or before another statutory authority;
- (j) which relate to the deferred payment, free of charge, of an existing debt;
- (k) for pawnbroking where the liability of the consumer is strictly limited to the pledged item; and
- (l) which relate to loans granted to a restricted group (not the public generally) under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest, or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.

Insolvency practitioners

- 2.9.25 G This group of exclusions applies, in specified circumstances, to the regulated activities of:
- (1) *dealing in investments as principal;*
 - (2) *dealing in investments as agent;*
 - (3) *arranging (bringing about) deals in investments;*

- (4) making arrangements with a view to transactions in investments;
- (5) operating a multilateral trading facility;
- (6) managing investments;
- (7) assisting in the administration and performance of a contract of insurance;
- (8) debt adjusting;
- (9) debt counselling;
- (10) debt collecting;
- (11) debt administration;
- (12) safeguarding and administering investments;
- (13) sending dematerialised instructions;
- (14) managing a UCITS;
- (15) acting as trustee or depositary of a UCITS;
- (16) managing an AIF;
- (17) acting as a trustee or depositary of an AIF;
- (18) establishing, operating or winding up a collective investment scheme;
- (19) establishing, operating or winding up a stakeholder pension scheme;
- (20) establishing, operating or winding up a personal pension scheme;
- (21) advising on investments;
- (22) providing credit information services.

2.9.26 G These exclusions apply to a person acting as an insolvency practitioner. The term “insolvency practitioner” is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989. The exclusions relating to debt adjusting, debt counselling and providing credit information services also apply to any activity carried on by a person acting in reasonable contemplation of that person’s appointment as an insolvency practitioner.

2.9.27 G A person acting as an insolvency practitioner or in reasonable contemplation of that person’s appointment as an insolvency practitioner include anything done by the person’s firm in connection with that person so acting. For these purposes, the reference to “the person’s firm” means the person’s

employer, the partnership in which he is a partner or the limited liability partnership of which he is a member, as the case may be.

...

2.10.3 G The Act provides that *appointed representatives* (see PERG 2.10.5G), *recognised investment exchanges* and *recognised clearing houses* (see PERG 2.10.6G) and certain other *persons* exempt under miscellaneous provisions (see PERG 2.10.7G) are *exempt persons* (although in certain circumstances, an appointed representative may not be an exempt person, but may have a limited permission to carry on certain credit-related regulated activities). Members of Lloyds and members of the professions are not ‘*exempt persons*’ as such, but the *general prohibition* in section 19 of the Act only applies to them in certain circumstances. The distinction is significant in relation to various provisions (such as those in the *Regulated Activities Order*) that apply only to transaction and other activities that involve *exempt persons*.

2.10.5 G A With one exception, a person is exempt if he is an appointed representative of an authorised person. In some circumstances, however, a person may be an appointed representative and not be exempt, if the person has a limited permission for certain credit-related regulated activities. See SUP 12 (Appointed representatives). But where an appointed representative carries on insurance mediation or reinsurance mediation he will not be exempt unless he is included on the register kept by the FCA under article 93 of the Regulated Activities Order (Duty to maintain a record of unauthorised persons carrying on insurance mediation activities) (see PERG 5.13 (Appointed representatives)).

Insert the following new section after PERG 2.10. The text is not underlined.

2.11 Persons who are exempt for credit-related regulated activities

2.11.1 G Various persons are exempted by Order made by the Treasury under section 38 of the Act from the need to obtain *authorisation* for certain *credit-related regulated activities* in the circumstances specified in the Order (for example, in some cases, a *person* is exempt only when acting in a particular capacity or for particular purposes). *Persons* exempt under the Order cannot be exempt in relation to some *regulated activities* and *authorised* in relation to others (except where the *person* is an *authorised person* with only *interim permission*).

Official receivers

2.11.2 G A *person* acting as:

- (1) an official receiver; or
- (2) a judicial factor;

is exempt in respect of *debt adjusting, debt counselling, debt collecting, debt administration or providing credit information services*.

Cycle to work

- 2.11.3 G This exemption applies to a scheme under which an employer provides or makes available to their employees a cycle or cyclist's safety equipment up to the value of £1,000 (which is designed to allow employees to take advantage of section 244 of the Income Tax (Earnings and Pensions) Act 2003). An employer does not require *authorisation* for the *regulated activities* relating to *regulated consumer hire agreements* just because it operates such a scheme.

Tracing agents

- 2.11.4 G A *person* who takes steps to ascertain the identity or location (or the means of ascertaining the identity or location) of a *borrower* or *hirer* is exempt from *debt-collecting* as long as the *person* is not the *lender* or *owner* under the agreement concerned, takes no other steps to collect debts due under the agreement and carries on no other activity which requires *authorisation*.

Enterprise schemes

- 2.11.5 G There are also exemptions from *credit broking, debt adjusting, debt-counselling* and *providing credit information services* for an enterprise scheme as long as it does not carry on the activity for, or with the prospect of, direct or indirect pecuniary gain. Sums reasonably regarded as necessary to meet the costs of carrying on the activity do not constitute a pecuniary gain for this purpose.

PERG 2 Annex 1G Authorisation and regulated activities

Amend the following as described below.

The flowchart shown in this annex has been amended by the Alternative Investment Fund Managers Directive (Consequential Amendments) Instrument 2014 (FCA 2013/14). Following the amendments made by that instrument, the following further amendments are made by *this* instrument to that flowchart:

A new 'balloon' is inserted between the current second and third balloon (i.e. after the balloon which reads "Are you, or will you be, involved with *specified investments* of any kind?").

The new balloon reads "Are your activities related to information about a *person's financial standing*?"

A linking arrow "No" is inserted linking the left side of the previous balloon to the top side of the new balloon (replicating the arrow from the current second to the current third balloon).

A linking arrow "No" is inserted linking the left side of the new balloon to the top side of the next balloon (replicating the arrow from the current second to the current third balloon).

The new balloon is linked, at its right side, to the vertical line, with "Yes" appearing above the link.

To the right of the right-hand link is inserted the following text "Consult articles 89A and 89B of the *RAO*".

2 Annex 2 Regulated activities and the permission regime

...

1.3 G	Part II of the <i>Regulated Activities Order</i> (Specified activities) specifies the activities for the purposes of section 22 of the Act. This section states that an activity is a regulated activity if it is an activity of a specified kind which is carried on by way of business and:	
	(1)	relates to an investment of a specified kind; or
	(2)	in the case of an activity specified for the purposes of section 22(1)(b) of the Act, is carried on in relation to property of any kind; <u>or</u>
	(3)	<u>relates to information about a <i>person's</i> financial standing.</u>
...		

2 Table

...	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
<i>(zo) administering a regulated sale and rent back agreement (Article 63(J)(2))</i>	<i>rights under a regulated sale and rent back agreement (Article 88C)</i>
<u>Credit-related regulated activity</u>	
<i><u>(zp) entering into a regulated credit agreement as lender (article 60B(1))</u></i> <i><u>(zq) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (article 60B(2))</u></i> <i><u>(zr) credit broking (article 36A)</u></i> <i><u>(zs) operating an electronic system in relation to lending (article 36H)</u></i> <i><u>(zt) debt adjusting (article 39D(1))</u></i> <i><u>(zu) debt counselling (article 39E(1))</u></i>	<i><u>Rights under a credit agreement (article 88D) (see note 9 to Table 1)</u></i>

<p><u>(zv) debt collecting (article 39F(1))</u></p> <p><u>(zw) debt administration (article 39G(1))</u></p>	
<p><u>(zx) entering into a regulated consumer hire agreement as owner (article 60N(1))</u></p> <p><u>(zy) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement (article 60N(2))</u></p> <p><u>(zz) credit broking (article 36A)</u></p> <p><u>(zaa) debt adjusting (article 39D(2))</u></p> <p><u>(zab) debt counselling (article 39E(2))</u></p> <p><u>(zac) debt collecting (article 39F(2))</u></p> <p><u>(zad) debt administration (article 39G(2))</u></p>	<p><u>Rights under a consumer hire agreement (article 88E)</u></p>
<p><u>(zae) providing credit information services (article 89A)</u></p> <p><u>(zaf) providing credit references (article 89B)</u></p>	<p><u>(see note 10 to Table 1)</u></p>

3 Table

<p>...</p>
<p>Note 8:</p> <p>...</p>
<p><u>Note 9:</u></p> <p><u>For the purposes of the permission regime with respect to the regulated activities of entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement, this is sub-divided into:</u></p> <p><u>(i) a regulated credit agreement (excluding high-cost short-term credit, a home credit loan agreement and a bill of sale loan agreement);</u></p> <p><u>(ii) high-cost short-term credit;</u></p> <p><u>(iii) a home credit loan agreement;</u></p> <p><u>(iv) a bill of sale loan agreement.</u></p> <p><u>For the purposes of operating an electronic system in relation to lending, rights under a credit agreement include rights under an article 36H agreement within the meaning of article 36H (4) of the Regulated Activities Order.</u></p>
<p><u>Note 10:</u></p> <p><u>Article 4 (2A) of the Regulated Activities Order specifies the activities (zae) and (zaf) for the</u></p>

purposes of section 22(1A)(a) of the Act (these activities are expressed as relating to information about a person's financial standing rather than to a *specified investment*) and accordingly will be *regulated activities* when carried on by way of business.

...

- 4.2.4 G ~~Even if the *person* does not require *authorisation*, he may still require a licence under the Consumer Credit Act 1974 to carry on the activity (see *PERG* 4.17 (Interaction with the Consumer Credit Act 1974)).~~ [deleted]

...

4.7 Entering into a regulated mortgage contract

...

Exclusions

- 4.7.2 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *entering into a regulated mortgage contract*. There is also an exclusion for *local authorities*. ~~This is~~ These are referred to in *PERG* 4.10 (Exclusions applying to more than one regulated activity). ~~There~~ In addition, there is also an exclusion where both the lender and borrower are overseas, which is referred to in *PERG* 4.11 (Link between activities and the United Kingdom).

...

...

Other Exclusions

- 4.8.8 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *administering regulated mortgage contracts*. There is also an exclusion for *local authorities*. ~~This is~~ These are referred to in *PERG* 4.10 (Exclusions applying to more than one regulated activity). ~~There~~ In addition, there is also an exclusion where both the administrator and borrower are overseas, which is referred to in *PERG* 4.11 (Link between activities and the United Kingdom).

...

4.10.9 G ...

Exclusion: Local authorities

4.10.10 G There are exclusions that apply, in relation to each of the regulated mortgage activities if the person carrying on the activity is a local authority.

...

4.12.2 G Unless a person has only a limited permission for certain credit-related regulated activities, A a person who is an authorised person cannot be an appointed representative (see section 39(1) of the Act (Exemption of appointed representatives)).

...

4.13.1 G ...

(1) ~~local authorities (paragraph 47 of the Schedule to the Exemption Order) but not their subsidiaries; [deleted]~~

...

...

4.17 Interaction with the Consumer Credit Act

Entering into and administering a regulated mortgage contract

4.17.1 G ~~Article 90 of the Regulated Activities Order essentially carves out regulated mortgage contracts from regulation under the Consumer Credit Act 1974 (CCA). Many loans that fall within the regulated mortgage contract definition are already exempt from much of the detail required under the CCA. The cumulative effect of article 20(3) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (the 2013 Order) and Chapter 14A of Part 2 of the Regulated Activities Order is to essentially carve out regulated mortgage contracts from regulation under the CCA and from regulation as a credit-related regulated activity.~~

4.17.2 G ~~Some loans that will fall within the regulated mortgage contract definition are also currently classified as regulated agreements under the CCA. In these cases, the impact of the carve-out in article 90 of the Regulated Activities Order is likely to be more significant. In particular, most of the CCA controls in respect of entering into, operation and termination of agreements will not apply. Article 90 also, however, provides that section 126 of the~~

CCA (Enforcement of land mortgages) and other provisions relating to it, apply to agreements which would otherwise be *regulated agreements*. In the FCA's view, it follows that section 126 of the CCA and related provisions including sections 129, 130, 131, 135 and 136 (dealing amongst other things with extension of time and protection of property pending proceedings) will apply to these *regulated mortgage contracts*. Section 126(2) of the CCA (as inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014) provides, however, that for the purposes of section 126(1) of the CCA (a land mortgage securing a *regulated credit agreement* is enforceable (so far as provided in relation to the agreement) on an order of the court only) and Part 9 of the CCA (judicial control) a *regulated mortgage contract* which would, but for the exemption in PERG 2.7.19CG(1), be a *regulated credit agreement* is to be treated as if it were a *regulated credit agreement*. This is subject to section 140A(5) of the CCA (unfair relationships between creditors and debtors), which provides that an order under section 140B of the CCA (powers of court in relation to unfair relationships) shall not be made in connection with a *credit agreement* which is an exempt agreement under PERG 2.7.19CG.

- 4.17.3 G *Regulated mortgage contracts* that were in place at 31 October 2004 and which are subject to the ~~CCA~~ CCA will remain subject to ~~that the~~ the regime in the CCA and may be *regulated credit agreements* for the purposes of the credit-related regulated activities in Chapter 14A of Part 2 of the Regulated Activities Order and will come within the FCA's remit. But there may be instances where a variation of an existing contract amounts to entering into a new *regulated mortgage contract* (see PERG 4.4.4G and PERG 4.4.13G).
- 4.17.4 G Unsecured loans, as well as loans secured on second and subsequent charges on property, are not subject to ~~the article 90~~ the carve-out described above and may be regulated credit agreements for the purposes of the CCA and the credit-related regulated activities for which a *person* may need *permission*. Many of these loans are currently covered by the CCA and the position will not change.
- 4.17.5 G ~~In some cases, lenders may provide a flexible mortgage product comprising both a secured first charge loan and unsecured borrowing, for example credit card facilities. In this example, in addition to considering the need for full authorisation, the lender will also require a CCA licence in respect of the unsecured lending, even where the product is sold under a single agreement.~~
~~[deleted]~~

~~Advising on and arranging a regulated mortgage contract~~

- 4.17.6 G The CCA also regulates *persons* who carry on certain types of ancillary credit business including "credit brokerage", "debt adjusting" and "debt-counselling", as defined by section 145 of the CCA. One aspect of the CCA regime is that a licence is required for these activities. Article 20 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (SI 2003/1475) adds new exceptions to section 145 of the CCA in relation to these activities. ~~[deleted]~~

- 4.17.7 G Article 20(2) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 amends section 146 of the CCA (Exceptions from section 145) so that it is not "credit brokerage" for a *person* to introduce an individual seeking to obtain credit if the introduction is made (a) to an *authorised person* who has *permission* to enter as lender into "relevant agreements"; or (b) to a "qualifying broker", with a view to that individual obtaining credit under a "relevant agreement". [deleted]
- 4.17.8 G Amended section 146 of the CCA defines "relevant agreement" as meaning a consumer credit agreement secured by a land mortgage, where entering into that agreement as lender is a *regulated activity*. "Qualifying broker" is defined in the same section as meaning a *person* who may effect introductions of the kind mentioned in PERG 4.17.7 G without contravening the *general prohibition* under section 19 of the Act. "Credit brokerage" itself includes introducing an individual seeking to obtain credit to finance the acquisition of a dwelling to be occupied by himself or his relatives, to any *person* carrying on a business in the course of which he provides credit secured on land (for full definition see section 145(2) of the CCA). [deleted]
- 4.17.9 G In addition to the provisions of the exception under amended section 146 of the CCA, introducers are referred to the *guidance* in PERG 4.5.10 G dealing with the provisions relating to introducing in the *Regulated Activities Order*. [deleted]
- 4.17.10 G Article 20(2) amends section 146 of the CCA by providing that it is not "debt adjusting" to carry on an activity which would otherwise be "debt adjusting" under section 146(5) of the CCA if (a) the debt in question is due under a "relevant agreement"; and (b) that activity constitutes a *regulated activity*. "Debt adjusting" includes in relation to debts due under consumer credit agreements (a) negotiating with the creditor, on behalf of the debtor, terms for discharge of the debt, or (b) taking over, in return for payments by the debtor, his obligation to discharge a debt, or (c) any similar activity concerned with the liquidation of the debt (see full definition in section 145(5) of the CCA). [deleted]
- 4.17.11 G In addition to the provisions of the exception under amended section 146 of the CCA, debt adjusters and arrangers are referred to the *guidance* in PERG 4.5 dealing with the provisions relating to *arranging* and, in particular, PERG 4.5.1G(1)(b) dealing with varying a *regulated mortgage contract*. [deleted]
- 4.17.12 G Article 20(2) amends section 146 CCA by providing that it is not "debt-counselling" for a *person* to give advice to debtors if (a) the debt in question is due under a "relevant agreement"; and (b) giving that advice constitutes a *regulated activity*. "Debt counselling" includes the giving of advice to debtors about the liquidation of debts due under consumer credit agreements (see the full definition in section 145(6) of the CCA). [deleted]
- 4.17.13 G In addition to the provisions of the exception under amended section 146 of the CCA, debt counsellors and advisers are referred to the *guidance* in

~~PERG 4.6 dealing with *advising on regulated mortgage contracts* and, in particular, PERG 4.6 (Definition of '*advising on regulated mortgage contracts*') dealing with varying a *regulated mortgage contract*. [deleted]~~

- 4.17.14 G ~~The CCA's licensing regime will still apply to credit brokers, debt adjusters and debt counsellors in respect of non-regulated mortgages and other loans, as well as to *authorised persons* or *appointed representatives* who carry on ancillary credit business in addition to *regulated activities*. Accordingly, *mortgage intermediaries* requiring *authorisation* may also need to retain their CCA licences. [deleted]~~

Financial Promotion and advertisements

- 4.17.15 G ~~Articles 90 and 91 of the *Regulated Activities Order* include provisions that have the effect of removing from CCA regulation *financial promotions* about *qualifying credit*. Such promotions will not therefore be subject to Part IV of the CCA or regulations made under that Part. Article 17 of the 2013 Order has the effect that the *controlled activity* of providing relevant consumer credit for the purposes of the *financial promotion* regime does not include *regulated mortgage contracts*.~~
- 4.17.16 G For more detailed *guidance* concerning the ~~interface between application of the *financial promotion* regime and the regulation of credit advertisements under the CCA to *qualifying credit* and relevant consumer credit~~, see *PERG* 8.17.19G.

...

5.11 Other aspects of exclusions

- 5.11.1 G This part of the *guidance* deals with:

...

- (3) the following exclusions applying to more than one *regulated activity*:

...

- (c) large risks (article 72D (Large risks contracts where risk situated outside the EEA)); ~~and~~
- (d) activities carried on by *firms* with a *Part 4A permission to manage a UCITS* or *manage an AIF* (article 72AA (Managers of UCITS and AIFs));
- (e) activities carried on by a *local authority* (article 72G); and
- (f) activities carried on by a *person acting as an insolvency practitioner* (article 72H).

...

- 5.11.8 G Chapter XVII of the *Regulated Activities Order* (Exclusions applying to several specified kinds of activity) contains various exclusions applying to several kinds of activity. ~~Four~~ Five exclusions of relevance in relation to *contracts of insurance* are dealt with in this section and a ~~fifth~~ sixth, *overseas persons*, in *PERG* 5.12 (Link between activities and the United Kingdom).

...

- 5.11.18 G Article 72G (Local authorities) excludes from the activities of *dealing in investments as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the administration and performance of a contract of insurance and advising on investments* any activity carried on by a *local authority* which relates to a *contract of insurance* which is not a *life policy*.

- 5.11.19 G Article 72H (Insolvency Practitioners) excludes from the activities of *dealing in investments as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, assisting in the administration and performance of a contract of insurance and advising on investments* any activity carried on by a *person acting as an insolvency practitioner*.

...

- 5.13.1 G Section 39 of the *Act* (Exemption of appointed representatives) exempts *appointed representatives* from the need to obtain *authorisation* (or, in relation to an *appointed representative with a limited permission*, provides that sections 20(1) and (1A) and 23(1A) of the *Act* do not apply in relation to the carrying on of the *regulated activity* which is comprised in the business for which his *principal* has accepted responsibility and for which he does not have *limited permission*).

- 5.13.2 G Unless a *person* has only a *limited permission* for certain *credit-related regulated activities*, A *a person* who is an *authorised person* cannot be an *appointed representative* (see section 39(1) of the *Act* (Exemption of appointed representatives)).

- 5.13.6 G Where a *person* is already an *appointed representative* and he proposes to carry on any *insurance mediation activities*, he will need to consider the following matters.
- (1) He must become *authorised* if his proposed *insurance mediation activities* include activities that do not fall within the table in *PERG* 5.13.4G (for example, *dealing as agent in pure protection contracts*) and he wishes to carry on these activities. The *Act* does not permit any *person* to be exempt for some activities and *authorised* for

others (although a *person with only a limited permission* for certain *credit-related regulated activities* may also be an *appointed representative* for other *regulated activities* specified in the *Appointed Representatives Regulations* (see SUP 12.2.2AG)). He will, therefore, need to apply for *permission* to cover all the *regulated activities* that he proposes to carry on.

...

...

5.14.5 G In addition to certain named *persons* exempted by the *Exemption Order* from the need to obtain *authorisation*, the following bodies are exempt in relation to *insurance mediation activities* that do not relate to *life policies*:

(1) ~~local authorities but not their subsidiaries;~~ [deleted]

(2) ...

...

Introductions (article 15)

8.12.11 G ...

8.12.11A G This exemption does not apply to any *financial promotion* that is made with a view to, or for the purpose of, an introduction to a person who carries on the *controlled activities* of:

(1) credit broking;

(2) operating an electronic system in relation to lending; or

(3) agreeing to carry on the above activities.

Exempt persons (article 16)

8.12.12 G This exemption covers ~~two~~ three distinct situations. Article 16(1) applies to all *exempt persons* where they make *financial promotions* for the purpose of their exempt activities. These *persons* would include *appointed representatives* (except *appointed representatives* to whom the exemption in article 16(1A) applies; see PERG 8.12.12AG), *recognised investment exchanges*, *recognised clearing houses*, *recognised auction platforms* and those who are able to take advantage of the *Exemption Order*. So, it allows *exempt persons* both to promote that they have expertise in certain *controlled activities* and to make *financial promotions* in the course of carrying them on. Article 16(1) does not apply to *unsolicited real time financial promotions*. *Persons* to whom the *general prohibition* does not apply because of Part XX (Provision of financial services by members of the professions) or Part XIX (Lloyd's members

and former underwriting members) of the *Act* are not, for the purposes of article 16, *exempt persons* for their Part XX or Part XIX activities.

8.12.12A G Article 16(1A) applies to non-real time financial promotions and solicited real time financial promotions made:

- (1) by an appointed representative who is carrying on an activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply as a result of section 39(1D) of the Act; and
- (2) for the purposes of the appointed representative's business of carrying on a controlled activity which is also a regulated activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D) of the Act.

SUP 12.2.2AG(3) provides guidance on section 39(1D) of the Act.

...

...

8.14.18 G This exemption allows a *person* in another *EEA State* who lawfully carries on a *controlled activity* in that State to promote into the *United Kingdom*. The terms of the exemption are that the promotion must comply with the rules in *COBS 4*, ~~or~~ *MCOB 3* or *CONC 3* (as relevant). Care should be taken, as any failure to satisfy any of the relevant requirements of these rules may mean that this exemption is not satisfied and the *financial promotion* may breach section 21 if it has not been *approved* and no other exemption applies to it. The *FCA* recommends that anyone seeking to rely on this exemption either seeks professional advice or contacts the *FCA* before *communicating* the *financial promotion*. This exemption does not apply to *unsolicited real time financial promotions*.

...

8.14.40A G ...
E

Credit agreements offered to employees by employers (article 72F)

8.14.40A G Article 72F exempts any financial promotion which is made to an employee by or on behalf of a person in relation to an exempt staff loan. An exempt staff loan is defined as a credit agreement which is:
EA

- (1) entered into by the employee as borrower and the employer, or an undertaking in the same group as the employer, as lender; and
- (2) an exempt agreement under a provision of article 60G (exempt agreements: exemptions relating to the total charge for credit) of the Regulated Activities Order other than article 60G(2) (relating to

loans by credit unions). Guidance on article 60G can be found in PERG 2.7.19IG.

- 8.14.40A G The exemptions described in *PERG 8.14.40AG* to *PERG 8.14.40AEAG*
F should enable employers (and their contracted service providers) to promote employee benefits packages that include any *pension schemes*, *work-related insurance schemes* ~~and~~, *staff mortgages* and certain staff loans to employees without undue concern that they may be breaching the restriction in section 21 of the *Act*. *PERG 8.14.34G* (Communications by employers and contracted service providers to employees) has further *guidance* about the application of section 21 to employers and contracted service providers generally.

...

...

- 8.15.6 G A *financial promotion* made under article 55A must contain a statement in the following terms: "The [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment and consumer credit-related services to clients because we are members of [relevant designated professional body]. We can provide these investment and consumer credit-related services if they are an incidental part of the professional services we have been engaged to provide". The *financial promotion* may also set out the Part XX activities which the *person* is able to offer to his clients, provided it is clear that these are the incidental services to which the statement relates. The exemption also provides that a defect in the wording of the statement does not affect its validity. This is provided that the defect does not alter the meaning of the communication.

...

8.17 Financial promotions concerning agreements for qualifying credit

- 8.17.1 G Section 21 applies to *financial promotions* concerning agreements for qualifying credit and relevant consumer credit. *PERG 8.17.1AG* to *PERG 8.17.18G* has guidance about the treatment of ~~such~~ *financial promotions concerning agreements for qualifying credit*. *PERG 8.17-AG* has guidance about financial promotions concerning relevant consumer credit. ~~Section 21 applies not only to financial promotions about regulated mortgage contracts but also to financial promotions about certain other types of credit agreement. This is explained in more detail in PERG 8.17.2G to PERG 8.17.3G.~~

...

8.17.10 G Article 46 (Qualifying credit to bodies corporate) exempts any *financial promotion* about providing qualifying credit (or relevant consumer credit or consumer hire) if it is:

...

...

8.17.12 G Article 28B (Real time communications: introductions) exempts a *real time financial promotion* that relates to one or more of the *controlled activities* about regulated mortgage contracts, as well as home reversion plans, home purchase plans, and regulated sale and rent back agreements, certain consumer hire agreements and relevant credit agreements. The exemption is subject to the following conditions being satisfied:

(1) the *financial promotion* must be made for the purpose of, or with a view to, introducing the recipient to a *person* ('N') who is:

...

(b) an *appointed representative*, where the *controlled activity* is also a *regulated activity* in respect of which the *appointed representative* is exempt or in relation to which sections 20 (1) and (1A) and 23 (1A) of the Act do not apply by virtue of section 39(1D) of the Act (see SUP 12.2.2AG(3)); or

(c) an overseas person who carries on the *controlled activity* to which the communication relates; for this purpose, an 'overseas person' is a *person* who carries on any of the *controlled activities* about home finance transactions or of providing relevant consumer credit or consumer hire but does not do so, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*; and

...

...

Interaction with the Consumer Credit Act

8.17.17 G ~~Most credit advertisements are, with various exceptions, regulated under the Consumer Credit Act 1974. However, article 90(3) (Consequential amendments of the Consumer Credit Act 1974) and Article 91(1) (Consequential amendments to subordinate legislation under the Consumer Credit Act 1974) of the *Regulated Activities Order* disapply the provisions of the Consumer Credit Act 1974 to any *financial promotion* other than an exempt generic communication. An exempt generic communication is a *financial promotion* that is exempt under article 17 of the *Financial Promotion Order (Generic promotions)* (see PERG 8.12.14 G (Generic promotions (article 17))). Hence, an advertisement about credit of any kind~~

will either be regulated under Section 21 of the Act or under the Consumer Credit Act 1974. Such an advertisement will only be subject to regulation under both statutes if it is about secured and unsecured lending. Typical examples showing which statute regulates particular types of credit advertisements are given in the table in PERG 8.17.18 G (Table – Guide to the application of the Act and the Consumer Credit Act 1974 to credit advertisements). [deleted]

8.17.18 G Guide to application of the Act and the Consumer Credit Act 1974 to credit advertisements. This table belongs to PERG 8.17.17G

-	Subject of advertising or promotion	FSMA regulated	CCA regulated
(1)	regulated mortgage contracts	Yes	No
(2)	other loans secured on land where the lender also enters into regulated mortgage contracts as lender	Yes	No
(3)	loans not secured on land whether or not the lender also enters into regulated mortgage contracts as lender	No	Yes
(4)	loans not secured on land but which form part of a loan product that is otherwise secured on land and where the lender enters into regulated mortgage contracts as lender	Yes	No
(5)	loans as in (1), (2) or (4) but where the advertisement is subject to exemptions under the Financial Promotion Order other than article 17 (Generic promotions)	Yes	No
(6)	loans as in (1), (2) or (4) but where the advertisement is exempt under article 17 of the Financial Promotion Order (Generic Promotions)	No	Yes
(7)	loans with features as in (1), (2), (4) or (5) promoted in combination with other loans	Yes	Yes

[deleted]

Interaction with providing relevant consumer credit

8.17.19 G Rights under a relevant credit agreement are also a controlled investment. A

relevant credit agreement is a *credit agreement* other than a *regulated mortgage contract* or a *regulated home purchase plan*. Entering into a relevant credit agreement as lender, or exercising or having the rights to exercise the rights of the lender under such an agreement, is a *controlled activity* under paragraph 10BA of Schedule 1 to the *Financial Promotion Order*, except where the agreement is for the provision of *qualifying credit*. Further guidance on providing relevant consumer credit is given in *PERG 8.17-A*.

8.17.20 G CONC 3 contains rules about financial promotions relating to credit-related regulated activity. CONC 3 does not apply, however, to the communication, or approval for communication, of a financial promotion to the extent it concerns qualifying credit. MCOB 3 applies to the communication or approval of a financial promotion of qualifying credit. This means that a financial promotion about credit will not usually be subject to both MCOB 3 and CONC 3 unless it is about secured and unsecured lending. Guidance on the potential application of MCOB 3 and CONC 3 to particular types of financial promotion of credit is given in the table in PERG 8.17.21G. Firms must also comply with Principle 7 (a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading).

8.17.21 G Guide to potential application of MCOB 3 and CONC 3 to financial promotion of credit. This table belongs to PERG 8.17.20G.

-	<u>Subject of promotion</u>	<u>MCOB 3</u> <u>may</u> <u>apply</u>	<u>CONC 3</u> <u>may</u> <u>apply</u>
(1)	<u>regulated mortgage contracts</u>	<u>Yes</u>	<u>No</u>
(2)	<u>credit agreements secured on land where the lender also enters into regulated mortgage contracts as lender</u>	<u>Yes</u>	<u>No</u>
(3)	<u>credit agreements not secured on land, whether or not the lender also enters into regulated mortgage contracts as lender</u>	<u>No</u>	<u>Yes</u>
(4)	<u>credit agreements secured on land where the lender does not enter into regulated mortgage contracts as lender</u>	<u>No</u>	<u>Yes</u>
(5)	<u>credit agreements partly secured on land that include some unsecured credit and where the lender enters into regulated mortgage contracts as lender</u>	<u>Yes</u>	<u>No</u>
(6)	<u>credit agreements with features as in (1), (2) or (5) promoted in combination with other unsecured credit agreements</u>	<u>Yes</u>	<u>Yes</u>

Insert the following new section after PERG 8.17 and before PERG 8.17A. The text is not underlined.

8.17-A Financial promotions concerning consumer credit and consumer hire

8.17-A.1 G Section 21 of the *Act* applies to *financial promotions* in relation to relevant consumer credit and consumer hire. This section sets out guidance about such *financial promotions*.

Controlled investments

8.17-A.2 G Rights under a relevant credit agreement are a *controlled investment*. A relevant credit agreement is defined as a *credit agreement* other than a *regulated mortgage contract* or a *regulated home purchase plan*.

8.17-A.3 G Rights under a *consumer hire agreement* are also a *controlled investment*.

Controlled activities

8.17-A.4 G Providing relevant consumer credit is a *controlled activity*. This is defined as entering into a relevant credit agreement (other than an agreement under which *qualifying credit* is provided) as *lender*, or exercising or having the rights to exercise the rights of the *lender* under such an agreement.

8.17-A.5 G The *controlled activities* also include providing consumer hire. A *person* provides consumer hire if he enters into a *regulated consumer hire agreement* (or an agreement that would be such an agreement were it not exempt under article 60O (exempt agreements: exemptions relating to the nature of the agreement) or 60Q (exempt agreement: exemptions relating to nature of hirer) of the *Regulated Activities Order*) as *owner* or exercises or has the right to exercise the rights of the *owner* under such an agreement.

8.17-A.6 G Operating an electronic system in relation to lending is a *controlled activity*. For the purposes of this *controlled activity*, the *controlled investment* of rights under a relevant credit agreement includes rights under an agreement within paragraph 4C(4) of Schedule 1 to the *Financial Promotion Order* (which is similar to an agreement within article 36H of the *Regulated Activities Order*, guidance on which is given in *PERG 2.7.7HG*).

8.17-A.7 G There are three other *controlled activities* that involve both of the *controlled investments* of relevant credit agreements and consumer hire agreements:

- (1) credit broking;
- (2) debt adjusting;

(3) debt counselling;

- 8.17-A.8 G The *controlled activities* in PERG 8.17-A.6G and PERG 8.17-A.7G are substantially the same as the *regulated activities* of *operating an electronic system in relation to lending, credit broking, debt adjusting and debt counselling* (although there are some technical differences between the *controlled activity* of credit broking and the *regulated activity* of *credit broking*. For example, the credit broking *controlled activity* captures all relevant credit agreements (including those to which the exemption relating to number of repayments to be made in article 60F of the *Regulated Activities Order* applies). Also, an activity is not the *controlled activity* of credit broking to the extent that it constitutes the *controlled activity* of arranging *qualifying credit*). *Guidance* on these *regulated activities* is given in PERG 2.7.7EG (credit broking), 2.7.7HG (operating an electronic system), 2.7.8BG (debt adjusting) and 2.7.8CG (debt counselling). Agreeing to carry on the above activities also constitutes a *controlled activity*.

Application of exemptions to financial promotions about agreements for relevant consumer credit or consumer hire

- 8.17-A.9 G *Financial promotions* about relevant consumer credit or consumer hire are subject to the exemptions in Part IV of the *Financial Promotion Order* (Exempt communications: all controlled activities). A number of the exemptions in Part VI of the *Financial Promotion Order* (Exempt communications: certain controlled activities) also apply. *Guidance* on some of these (which apply to *financial promotions* about both *qualifying credit* and relevant consumer credit) is given in PERG 8.17.10G to PERG 8.17.12G. There is one exemption that applies specifically to relevant consumer credit and consumer hire, referred to in PERG 8.17-A.10G.

Promotions of credit for business purposes (article 46A)

- 8.17-A.10 G (1) Article 46A of the *Financial Promotion Order* exempts a *communication* which relates to the *controlled activities* of operating an electronic system in relation to lending, providing relevant consumer credit or providing consumer hire.
- (2) This exemption applies only if the *communication*:
- (a) indicates clearly that a *person* is willing to engage in the investment activity for the purposes of another *person's* business; and
 - (b) does not indicate (by express words or otherwise) that the *person* is willing to engage in the investment activity for any other purpose.
- (3) For the purposes of this exemption, references to a “business” do not include a business carried on by the *person communicating* the promotion, or by a *person* who is a *credit broker* in relation to the

agreement to which the promotion relates.

Amend the following provisions as shown.

8.36.3 G Table Controlled activities

...	
4A.	Operating a multilateral trading facility
4B.	<u>Credit broking</u>
4C.	<u>Operating an electronic system in relation to lending</u>
5.	Managing investments
5A.	<u>Debt adjusting</u>
5B.	<u>Debt counselling</u>
...	
12.	Advising on qualifying credit etc
12A.	<u>Providing relevant consumer credit</u>
12B.	<u>Providing consumer hire</u>
...	

8.36.4 G Table Controlled investments

...	
17A.	Rights under a regulated sale and rent back agreement
17B.	<u>Rights under a relevant credit agreement (including rights under a paragraph 4C agreement)</u>
17C.	<u>Rights under a consumer hire agreement</u>
...	

...

8.36.6 G Table Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No.	Title and <i>PERG 8</i> reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)

...				
<u>46A</u>	<u>Promotions of credit etc. for business purposes (8.17-A.10G)</u>	*	*	*
...				
<u>72F</u>	<u>Credit agreements offered to employees by employers</u>	*	*	*
...				

...

14.3 Activities relating to home reversion plans

...

Q9. What exclusions may be available to me if I am entering into home reversion plans?

The main exclusions are those:

- for trustees who enter into a plan where the reversion occupier is an individual who is a beneficiary under the trust (article 66(6B) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); ~~and~~
- for local authorities (article 72G of the *Regulated Activities Order*).

...

Q11. What exclusions may be available to me if I am administering home reversion plans?

...

The other main exclusions are those:

- for trustees who administer a plan where the reversion occupier is an individual who is a beneficiary under the trust (article 66(6B) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); ~~and~~
- for local authorities (article 72G of the *Regulated Activities Order*).

...

Q15. What exclusions may be available to me if I am arranging home reversion plans?

...

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

...

- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order); ~~and~~
- *overseas persons* (article 72 of the Regulated Activities Order) (see Q39); and
- arrangements made by local authorities (article 72G of the Regulated Activities Order).

...

Q20. What exclusions may be available to me if I am advising on home reversion plans?

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); ~~and~~
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order); and
- advice given by local authorities (article 72G of the Regulated Activities Order).

Detailed guidance on the exclusion in article 54 is in *PERG 7*.

...

14.4 Activities relating to home purchase plans

...

Q27. What exclusions may be available to me if I am entering into home purchase plans as a provider?

The main exclusions are:

- for trustees who enter into a plan where the home purchaser is an individual who is a beneficiary under the trust (article 66(6C) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for providers that are local authorities (article 72G of the Regulated Activities Order).

...

Q30. What exclusions may be available to me if I am administering home

purchase plans?

...

The other main exclusions are those:

- for trustees who administer a plan where the home purchaser is an individual who is a beneficiary under the trust (article 66(6C) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

...

Q32. What exclusions may be available to me if I am arranging home purchase plans?

...

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

...

- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); ~~and~~
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39); and
- arrangements made by local authorities (article 72G of the *Regulated Activities Order*).

...

Q36. What exclusions may be available to me if I am advising on home purchase plans?

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); ~~and~~
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); and
- advice given by local authorities (article 72G of the *Regulated Activities Order*).

Detailed guidance on the exclusion in article 54 is in *PERG 7*.

...

14.4A Activities relating to regulated sale and rent back agreements

...

Q37 D. What exclusions may be available to me if I am entering into regulated sale and rent back agreements as agreement provider?

The main exclusions are those:

- for trustees who enter into a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for local authorities (article 72G of the *Regulated Activities Order*).

...

Q37 G. Are there any other exclusions available in relation to administering a regulated sale and rent back agreement?

The other main exclusions are those:

- for trustees who administer a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); ~~and~~
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for local authorities (article 72G of the *Regulated Activities Order*).

...

Q37 K. What exclusions may be available to me if I am arranging regulated sale and rent back agreements?

...

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

...

- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); ~~and~~
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39); and
- arrangements made by local authorities (article 72G of the *Regulated Activities Order*).

...

Q37 P. What exclusions may be available to me if I am advising on regulated sale and rent back agreements?

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); ~~and~~

- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order); and
- advice given by local authorities (article 72G of the Regulated Activities Order).

Detailed guidance on the exclusion in article 54 is in *PERG 7*.

...

14.7 Exemptions

Q40. Am I an exempt person in relation to home finance activities?

Yes, if you are:

- a *person* who is specifically exempt under the Financial Services and Markets Act 2000 (Exemption) Order 2001, such as a ~~local authority~~ or a registered social landlord; or
- an *appointed representative* whose agreement with his principal permits him to carry on the activities in question; or
- an *exempt professional firm*.

...

14.8 Financial promotions

...

Q45. What exemptions may be likely to be available to me when I communicate financial promotions about home finance plans or activities?

...

- (2) Exempt persons (article 16 of the Financial Promotion Order). This applies, subject to certain conditions, if you are an exempt person such as a ~~local authority~~, a registered social landlord or an *appointed representative*.

...

After PERG 16 insert the following new chapter. The text is not underlined.

17 Consumer credit debt counselling

17.1 Introduction

Q1.1 What is the purpose of the questions and answers in this chapter?

The purpose is to consider the scope of the *regulated activities* specifically relating to consumer credit debt counselling.

Q1.2 What are the regulated activities specifically relating to consumer credit debt counselling?

The *regulated activities* that specifically relate to consumer credit debt counselling are both to be found in article 39E of the *Regulated Activities Order*. They are:

- (1) giving advice to a *borrower* about the liquidation of a debt due under a *credit agreement*; and
- (2) giving advice to a *hirer* about the liquidation of a debt due under a *consumer hire agreement*.

Q1.3 What is the scope of this chapter?

This chapter is not a complete discussion of the *regulated activities* relating to consumer credit. It just concentrates on the things that are specific to *debt counselling*. In particular, it does not discuss the meaning of *borrower*, *credit agreement*, *consumer hire agreement* or *hirer*.

Q1.4 Are there transitional arrangements?

Yes, but they are outside the scope of this chapter.

17.2 The basic elements of debt counselling

Q2.1 What is the basic definition of debt counselling?

It involves the following elements:

- (1) It is advice given to:
 - (a) a *borrower* about the liquidation of a debt due under a *credit agreement*; or
 - (b) a *hirer* about the liquidation of a debt due under a *consumer hire agreement*;

(see *PERG* 17.3 for more about what the advice must be about).

- (2) The advice must relate to a particular debt and debtor (see *PERG* 17.4).
- (3) It covers the giving of advice. It does not cover just giving mere information. This is explained in *PERG* 17.5.

- (4) If an exclusion applies, the activity is not a *regulated activity* (see *PERG* 17.6).

Q2.2 Can you give some examples of what is and is not debt counselling?

Yes. There are examples in *PERG* 17.7.

Q2.3 What other factors are relevant to whether authorisation is needed?

- (1) Whether the activity is carried on by way of business (see *PERG* 2.3).
- (2) Whether an exemption is available (see *PERG* 2.11).
- (3) Whether the *person* can carry on the activity without *authorisation* (see *PERG* 2.10.12G to *PERG* 2.10.16G).

17.3 What the advice must be about

Q3.1 What does liquidation of a debt mean?

It has a wide meaning. For example, it would cover the following:

- paying off the debt in full and in time;
- agreeing a rescheduling or a temporary halt to paying off the debt;
- the debtor being released from the debt;
- agreeing a reduced repayment amount (including the creditor agreeing to accept token repayments);
- a third party taking over the debtor's obligation to discharge the debt;
- discharging the debt or making it irrecoverable through personal insolvency procedures such as bankruptcy, a voluntary arrangement or a debt relief order.

Q3.2 What does due mean?

As described in the answer to Q2.1 (What is the basic definition of debt counselling?), *debt counselling* relates to debts that are due under a *credit agreement* or a *consumer hire agreement*. As the regulation of *debt counselling* is a consumer protection measure the "due" should in the *FCA's* view be interpreted fairly broadly and should not be limited to debts that are immediately payable (for example, where the debtor is in default). Therefore, for instance, it would cover present obligations to make payments in the future.

Debt counselling is not limited to debts that are overdue. It also covers debts that are not overdue.

Q3.3 Does it matter if the advice also covers debts that are not due under a credit agreement or a consumer hire agreement?

No. If advice is given to a debtor about his debts, some of which are not payable under a *credit agreement* or a *consumer hire agreement*, that advice is regulated as long as some of the debts are due under a *credit agreement* or a *consumer hire agreement*. There is nothing in the definition of *debt counselling* or in the policy for regulating it that restricts *debt counselling* to a situation in which all the debts are consumer credit ones. Where advice covers both the consumer credit debt and the other debt, the advice on both types of debt is likely to be *debt counselling* as what is done about non-consumer credit debt is likely to affect consumer credit debt, particularly if the advice does not distinguish between the two types of debt. This is similar to the position for the advisory *regulated activities* in relation to transactions in regulated investments, which cover not only advice on the transaction in the regulated investment itself but also any advice with a view to, or in connection with, that transaction and advice as to any associated or ancillary matter.

For the same reason other kinds of advice that would not otherwise be treated as *debt counselling* will be included if that other kind of advice is given with a view to or in connection with the liquidation of consumer credit debts. See example (11) in the table in the answer to Q7.1 for an example of this.

17.4 Advice must relate to a particular debt and debtor

Q4.1 Does debt counselling cover advice given to the public in general rather than to a particular debtor?

Debt counselling covers giving advice about “a” debt. This means that the advice must relate to the debts of a particular debtor or debtors. Advice will normally not be covered if it is not given to any particular debtor. So for example, it would not generally cover advice in a newspaper, periodical publication, journal, magazine, publication or a radio or television broadcast. General advice open to everyone on a website is unlikely to be *debt counselling* for the same reason. On the other hand advice given to a particular debtor over the Internet may be regulated. Please see Q5.5 about whether decision trees involve *debt counselling*.

Q4.2 Must advice be given to a borrower?

Yes. *Debt counselling* means giving advice to a *borrower* under a *credit agreement* or a *hirer* under a *consumer hire agreement*. So for example it does not cover advice given to *persons* who receive it as:

- a lender under a *credit agreement* or the owner under a *consumer hire agreement*; or
- an adviser who will only use it to inform advice given by him to others (but see Q4.3); or
- a journalist or broadcaster who will use it only for journalistic purposes.

Q4.3 What about advice that is passed on through an intermediary?

This question covers advice prepared by A which is then passed on to the debtor by B.

If the debtor knows of this arrangement and knows that B does not exercise any judgement but just acts as a conduit, it is likely that A is *debt counselling* and B is not.

17.5 The meaning of advice

Q5.1 Broadly speaking, what is advice?

Advice means giving an opinion as a guide to action to be taken, in this case the liquidation of debts. It either explicitly or implicitly steers the customer to a particular course of action.

A key question is whether an impartial observer, having due regard to the regulatory regime and *guidance*, context, timing and what passed between the parties, would conclude that advice had been given. One should look at whether what the adviser says could reasonably have been understood by the client as being advice which would help him make up his mind.

The concept of advice is broad enough to include any communication with the debtor which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the debtor's decision whether or not to undertake the course of action in question.

Any course of action does not have to be identified in any detail. For example advice to opt for one of a number of identified possible debt solutions without advising which one of those the client should adopt may, depending on the circumstances, be *debt counselling*.

Q5.2 Does advice include a recommendation?

Yes, a recommendation to carry out a specific course of action to liquidate a relevant debt is likely to be *debt counselling*. However, something falling short of an explicit recommendation can be regulated too. Any element of evaluation, value judgment or persuasion is likely to mean that advice is being given.

Q5.3 Is giving information advice?

In the *FCA's* view, advice requires an element of opinion on the part of the adviser or something that might be taken by the debtor, expressly or by implication, to suggest or influence a course of action. Information, on the other hand, involves statements of facts or figures.

In general terms, simply giving balanced and neutral information without making any comment or value judgement on its relevance to decisions which a debtor may make is not advice. The provision of purely factual information does not become regulated advice merely because it feeds into the debtor's own decision-making process and is taken into account by him.

Therefore, a neutral and balanced explanation of the implications of entering into different debt solutions need not, itself, involve *debt counselling*.

In the *FCA's* opinion, however, such information is likely take on the nature of advice if the circumstances in which it is provided give it, expressly or by implication, the force of a recommendation.

For example the adviser may provide information on a selected, rather than balanced and neutral, basis that would tend to influence the decision of the debtor. This may arise where the adviser offers to provide information about certain ways of liquidating the debtor's debts that contain features specified by the debtor. The adviser may then exercise discretion as to which course of action to highlight.

A key to the question whether advice is given is whether that information is either accompanied by a comment or value judgment on the relevance of that information to the client's decision, or is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision of the recipient. In both these scenarios, the information acquires the character of a recommendation.

One factor in deciding whether what was said by an adviser in a particular situation did or did not amount to advice is to look at the inquiry to which the adviser was responding. If a debtor asks for a recommendation, any response is likely to be regarded as advice.

On the other hand, if a debtor makes a purely factual inquiry it may be the case that a reply which simply provides the relevant factual information is no more than that. In this case it is relevant whether the adviser makes it clear that it does not give advice or whether the adviser runs a *debt counselling* business.

Q5.4 PERG says a lot about generic advice in relation to other sorts of regulated advice. Is the idea of generic advice relevant to debt counselling?

Generic advice is a term the *FCA* uses to refer to something that is advice rather than mere information but which is not regulated because, although it relates to investments, it is not about the merits of buying or selling a particular investment.

The concept of generic advice is potentially relevant to *debt counselling*. As explained in the answer to Q1.2 (What are the regulated activities specifically relating to consumer credit debt counselling?) and Q4.1 (Does debt counselling cover advice given to the public in general rather than to a particular debtor?) *debt counselling* relates to the particular debts of a debtor. Advice that does not relate to particular debts in this way is likely to be generic advice.

However, as explained in the answer to Q5.1, advice may be *debt counselling* even though the advice does not identify a course of action with any precision. This narrows the types of advice that will be excluded from being *debt counselling* on the grounds of being generic advice. Another reason for generic advice being less relevant to *debt counselling* is that other types of regulated advice relate to a very specific activity, such as buying or selling investments, while the range of activities covered by *debt counselling* is wide.

See example (5) in the table in Q7.1 for an example of where generic advice is relevant to *debt counselling*.

Q5.5 Does a decision tree involve debt counselling?

Scripted questioning involves using any form of sequenced questions in order to extract information from a *person* with a view to facilitating the selection by that *person* of a method of liquidating his debts under a *credit agreement* or a *consumer hire agreement*. A decision tree is an example of scripted questioning. The process of going through the questions will usually narrow down the range of options that are available. Scripted questions must be prepared in advance of their actual use.

Undertaking the process of scripted questioning gives rise to particular issues concerning *debt counselling*. Whether or not scripted questioning in any particular case is *debt counselling* will depend on all the circumstances. If the process involves identifying one or more particular courses of action then, in the *FCA's* view, to avoid *debt counselling*, the critical factor is likely to be whether the process is limited to, and likely to be perceived by the debtor as, assisting the debtor to make his own choice of how to liquidate his debts. The questioner will need to avoid making any judgement on the suitability of one or more courses of action for the debtor.

The potential for variation in the form, content and manner of scripted questioning is considerable, but there are two broad types. The first type involves providing questions and answers which are confined to factual matters (for example, the nature and size of the debts). There are various possible scenarios, including the following:

- (1) The questioner may go on to identify several courses of action which match features identified by the scripted questioning; provided these are presented in a balanced and neutral way (for example, they identify all the possible courses of action, without making a recommendation as to a particular one) this need not, of itself, involve *debt counselling*.
- (2) The questioner may go on to advise the debtor on the merits of one particular course of action over another. This would be *debt counselling*.
- (3) The questioner may, before or during the course of the scripted questioning, give information that considered on its own would not involve *debt counselling* and, following the scripted questioning, identify one or more particular courses of action. The factors described in the answer to Q5.6 are relevant to deciding whether there is *debt counselling*.

The second type of scripted questioning involves providing questions and answers incorporating opinion, judgement or recommendations. This will involve advice not just information. There are various possible scenarios, including the following:

- (4) The scripted questioning may not lead to the identification of any particular course of action; in this case, the questioner has provided advice, but it is generic advice and does not amount to *debt counselling*. As explained in the answer to Q5.4 (generic advice) this will be an uncommon scenario.
- (5) The scripted questioning may lead to the identification of one or more particular courses of action. This is likely to be *debt counselling*.

Q5.6 What are the factors mentioned in paragraph (3) of the answer to Q5.5?

The *FCA* considers that it is necessary to look at the process and outcome of scripted questioning as a whole. Factors that may be relevant in deciding whether the process involves *debt counselling* include the following:

- (1) any representations made by the questioner at the start of the questioning relating to the service he is to provide;
- (2) the context in which the questioning takes place;
- (3) the role played by any questioner who guides a *person* through the scripted questions;
- (4) the outcome of the questioning (how many courses of action are highlighted, how precise they are, whether the questioner will help the debtor to carry out the course of action, whether the questioner identifies any third party who might help the debtor to carry out the course of action and the relationship between the questioner and that third party and so on); and
- (5) whether the scripted questions and answers have been provided by, and are clearly the responsibility of, an unconnected third party (for example, the *FCA*), and all that the questioner has done is help the debtor understand what the questions or options are and how to determine which option applies to his particular circumstances.

Q5.7 Does the medium used to give advice matter?

The medium used to give advice should make no material difference to whether or not the advice is *debt counselling*. Advice can be provided in many ways including:

- face to face;
- orally to a group;
- by telephone;
- by correspondence (including e-mail and text messaging);
- through the provision of an interactive software system.

However advice given in a publication, broadcast or website raises different issues (see the answer to Q4.1 (Does debt counselling cover advice given to the public in general rather than to a particular debtor?)).

17.6 Exclusions

Q6.1 What exclusions are available?

There are a number of exclusions that apply to *debt counselling*. The following table lists them and says where further information on them can be found in *PERG*.

Exclusions that apply to debt counselling		
What the exclusion covers	<i>RAO</i> article	Where summarised in <i>PERG</i>
Activities where person has a connection to the agreement	Article 39H	<i>PERG</i> 2.8.7CG(1)
Activities carried on by certain energy suppliers	Article 39I	<i>PERG</i> 2.8.7CG(3)
Activities carried on in relation to a <i>regulated mortgage contract</i> or a <i>home purchase plan</i>	Article 39J	<i>PERG</i> 2.8.7CG(4) and examples (17) and (18) in the table in the answer to Question 7.1.
Activities carried on by members of the legal profession etc.	Article 39K	<i>PERG</i> 2.8.7CG(5)
Information society services	Article 72A	<i>PERG</i> 2.9.18G
Local authorities	Article 72G	<i>PERG</i> 2.9.23G to 2.9.24G
Insolvency practitioners	Article 72H	<i>PERG</i> 2.9.25G to 2.9.27G

17.7 Examples

Q7.1 Please give me some examples of what is and is not debt counselling

Please see the following table. All the examples assume that the advice or information relates to debts under a *consumer credit agreement* or a *consumer hire agreement* or to a group of debts that include such debts.

Examples of what is and is not <i>debt counselling</i>
--

Example	Explanation
(1) Adviser: “I recommend you enter into a debt management plan”	This is <i>debt counselling</i> . This is advice which steers the debtor in the direction of a debt solution which the debtor could enter into as a means of liquidating his debts.
(2) Adviser: “I recommend you do not enter into a debt management plan”	This is <i>debt counselling</i> . This is advice which steers the debtor away from a particular debt solution which the debtor could have entered into as a means of liquidating his debts.
(3) Adviser: “I suggest you change (or do not change) from a debt management plan to a debt arrangement scheme” A debt arrangement scheme refers to a debt payment programme under the Scottish debt arrangement scheme (DAS).	This is <i>debt counselling</i> . This is advice that steers the debtor in the direction of a different debt solution from the one that he has already entered into as an alternative means of liquidating his debts.
(4) Adviser: “I recommend you do not borrow more than you can comfortably afford”	This is not <i>debt counselling</i> as it is about incurring debts, not liquidating them.
(5) Adviser: “I would recommend that you explore the pros and cons of all the different debt solutions that may be available to you”	This is not <i>debt counselling</i> . It is unregulated generic advice because it does not steer the debtor to any particular course of action in liquidating his debts.
(6) Adviser: “I think that reaching an informal agreement with your creditors about repaying your debts may not be the best option available to you given your circumstances. I will set out the pros and cons of various other debt solutions that may be more appropriate to your circumstances – but ultimately the option you choose will be a matter for you.”	This is likely to be <i>debt counselling</i> . It does not recommend a precise course of action but, as described in the answer to Q5.1 (Broadly speaking, what is advice?), this does not necessarily matter. The adviser is making a value judgement and giving an opinion and is steering the debtor towards certain courses of action and away from others. In particular, the adviser has recommended that the debtor does not deal with his debts by way of an informal agreement.

<p>(7) The adviser gives an explanation of the way that various types of debt solution work.</p>	<p>If this is given in a balanced and neutral way it is likely not to be <i>debt counselling</i> as it is just factual information.</p>
<p>(8) The adviser gives a comparison of the features and benefits of one type of debt solution with another and the implications of entering into the two different types of debt solutions.</p>	<p>Same as the answer to (7).</p>
<p>(9) An adviser advises on uncertain questions about a debt management plan.</p>	<p>The element of uncertainty is likely to mean that the advice has a strong element of opinion and hence is likely to be advice, rather than mere information. It is likely to be <i>debt counselling</i> as long as it steers the debtor towards a course of action in liquidating his debts.</p> <p>If the advice is given by a lawyer it is likely to be excluded from <i>debt counselling</i> by the exclusion in article 39K of the <i>RAO</i> (Activities carried on by members of the legal profession etc.) referred to in the answer to Q6.1.</p>
<p>(10) A <i>person</i> distributes leaflets or illustrations that help debtors to decide how they will liquidate their debts</p>	<p>This is not <i>debt counselling</i> as it is advice given to the general public. See the answer to Q4.1 (Does debt counselling cover advice given to the public in general rather than to a particular debtor?) for more about this.</p>

<p>(11) A <i>person</i> explains how to fill in a form for entering into an IVA</p>	<p>It is unlikely that a <i>person</i> would provide this advice on its own by way of business.</p> <p>If a <i>person</i> provides this help in the course of carrying on some other unregulated activities he will not be <i>debt counselling</i> as it should be seen as providing information not advice.</p> <p>If though he provides this help in the course of a wider <i>debt counselling</i> business it will be included as part of that <i>debt counselling</i> activity.</p> <p>If the explanation is given by the insolvency practitioner the exclusion in article 72H of the <i>RAO</i> (Insolvency practitioners) is likely to be available (see Q6.1 (What exclusions are available?)).</p>
<p>(12) A <i>person</i> uses direct marketing and other forms of advertising (for example, on websites promoted on search engines) and cold calling, to gather personal information from debtors, which is then sold on to providers of debt advice.</p>	<p>It is not <i>debt counselling</i> as it does not involve advice to debtors about the liquidation of debts due.</p> <p>However, a person providing such referrals will be <i>debt counselling</i> if during the course of communicating with a debtor he makes a recommendation to the debtor as to how he might liquidate his consumer credit debt.</p>
<p>(13) A <i>person</i> recommends that a debtor obtains advice from a particular <i>debt counselling firm</i>, ABC Debt Management.</p>	<p>Taken on its own it is not <i>debt counselling</i> because the adviser is advising the debtor to obtain advice from another adviser.</p> <p>However, if ABC Debt Management only offers one debt solution (e.g. a debt management plan), the referral could constitute a recommendation intended implicitly to steer the debtor in the direction of that particular debt solution and, therefore, could be advice (in which case it would be <i>debt counselling</i>).</p> <p>Consequently, whether or not <i>debt counselling</i> is involved will depend on the individual circumstances in each case and is likely to involve a</p>

	consideration of the process as a whole.
(14) Adviser: “I recommend you prioritise the repayment of your electricity bill over all other debts”	This is likely to constitute <i>debt counselling</i> if, having considered all of a debtor’s outstanding debts, an adviser advises the debtor to prioritise the repayment of a utility bill (e.g. an electricity bill) over his other outstanding debts (including debts arising under <i>credit agreements</i> or <i>consumer hire agreements</i>). This constitutes advising on the liquidation of debts due, since there is an implied recommendation that the debtor should postpone repaying his consumer credit related debts until he has repaid another debt or debts.
(15) A <i>person</i> (for example, a money adviser) helps a debtor to draw up a budget, e.g. providing a budget planner to see how much disposable income the client has each month or how long the client’s money could last over a particular period.	<p>This is not <i>debt counselling</i> if all the adviser does is to provide a debtor with information about his budget and the process is limited to, and likely to be perceived by the debtor as, assisting him to make his own choice as to a course of action he might take in liquidating his consumer credit-related debts.</p> <p>It may not be advice at all, in that it just puts into a convenient form information that the consumer has himself supplied.</p> <p>Even if it goes beyond just organising information supplied by the debtor, as long as the adviser gives the information in a balanced and neutral way, the adviser should be seen as providing information rather than advice. The adviser is supplying material that could be used for the purposes of deciding how to liquidate debts but not advising on liquidating them.</p>
(16) An adviser gives budgetary advice	This is <i>debt counselling</i> if the adviser goes beyond the services in example (15) and advises the debtor on how to match income and debts. For example, the adviser may advise the debtor to reduce discretionary spending to a set amount each month to enable him to

	<p>pay off a certain amount of a large credit card bill each month.</p> <p>It does not matter if the result of the advice is that the debtor should pay off his debts in full, rather than by instalments over a period of time or by entering into some sort of repayment plan, as <i>debt counselling</i> is not limited to advice about being released from paying the debt in full or rescheduling.</p>
<p>(17) Mortgage adviser: “I advise you to consolidate your unsecured consumer credit debts into this <i>regulated mortgage contract</i>”</p>	<p>This is unlikely to be <i>debt counselling</i>.</p> <p>Leaving aside the exclusions, this would be <i>debt counselling</i> as the mortgage adviser is proposing that the debtor should consolidate a number of his consumer credit debts into a single (potentially more manageable) debt with a view to the debtor being better able to liquidate all of his debts.</p> <p>However, the exclusion in article 39J of the <i>RAO</i> (Activities carried on in relation to a <i>regulated mortgage contract</i> or a <i>home purchase plan</i>) is likely to apply. So far as applicable to this example, the exclusion works like this:</p> <p>(a) The advice must relate to a <i>regulated mortgage contract</i>.</p> <p>This condition is satisfied.</p> <p>Example (18) illustrates the issues that would arise if the adviser did not advise on specific <i>regulated mortgage contracts</i>.</p> <p>(b) Giving the advice must be a <i>regulated activity</i>. If the only <i>regulated activity</i> involved in giving the advice is <i>debt adjusting</i>, that is not enough. Another <i>regulated activity</i> must apply too. However, the exclusion can still apply if the advice involves <i>debt adjusting</i> in addition to another <i>regulated activity</i>.</p> <p>This condition is met because the adviser is <i>advising on regulated mortgage contracts</i>.</p>

	<p>Note: Technically this condition (giving the advice must be a <i>regulated activity</i>) would not be satisfied if the only <i>regulated activity</i> carried on by the adviser is <i>debt adjusting</i>, <i>debt collecting</i> or <i>debt administration</i>. However, this example only mentions <i>debt adjusting</i> as, if any of these three <i>regulated activities</i> apply, it is likely only to be <i>debt adjusting</i>.</p> <p>(c) When the mortgage lender enters into the mortgage it will be carrying on the <i>regulated activity</i> of <i>entering into a regulated mortgage contract</i>.</p> <p><i>PERG 4.7</i> explains when <i>entering into a regulated mortgage contract</i> applies.</p>
<p>(18) Mortgage adviser: “I advise you to consolidate your unsecured consumer credit debts into a single <i>regulated mortgage contract</i>. However, I can’t advise you what mortgage contract you should enter into or which mortgage lender you should use.”</p>	<p>This is <i>debt counselling</i>. The exclusion in article 39J of the <i>RAO</i> (Activities carried on in relation to a <i>regulated mortgage contract</i> or a <i>home purchase plan</i>) does not apply.</p> <p>The difference between this example and example (17) is that the advice in this example does not relate to a particular <i>regulated mortgage contract</i> (or several different <i>regulated mortgage contracts</i>). As explained in more detail in <i>PERG 4.6.5G</i> this means that the adviser is not <i>advising on regulated mortgage contracts</i>. The exclusion in article 39J does not apply because the adviser is not carrying on another <i>regulated activity</i>, which means that one of the conditions for article 39J to apply is not met.</p> <p>See example (17) for an explanation of the conditions that must be satisfied if the article 39J exclusion is to apply.</p>
<p>(19) A <i>person</i> operating a peer-to-peer lending platform advises a debtor on the liquidation of a debt due under a consumer credit agreement entered into with a lender or lenders (via the platform). In this example, the platform operator is carrying on the <i>regulated activity</i> of <i>operating an electronic</i></p>	<p>This is <i>debt counselling</i> as long as the loan agreement is a <i>credit agreement</i>.</p> <p>The <i>regulated activity</i> of <i>operating an electronic system in relation to lending</i> covers agreements that are called article 36H agreements, which covers more than just <i>credit agreements</i>. If the consumer credit agreement is an article</p>

<i>system in relation to lending.</i>	36H agreement but not a <i>credit agreement</i> the advice will not be <i>debt counselling</i> .
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Annex R

Amendments to the Unfair Contract Terms Regulatory Guide (UNFCOG)

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

- 1.1.2 G We have agreed with the ~~Office of Fair Trading (“OFT”)~~ Competition and Markets Authority (“CMA”) that the *FCA* will consider the fairness (within the meaning of the Regulations) of financial services contracts for carrying on any *regulated activity*.
- 1.1.3 G ~~The OFT will consider the fairness of other financial services contracts which involve activities governed by the Consumer Credit Act 1974. This includes second charge mortgage loans, buy to let mortgages, and non mortgage personal loans (including credit cards). Also, where~~ Where the *firm* concerned is not a *firm* or an *appointed representative*, the ~~OFT~~ CMA may take enforcement action under the Regulations in respect of financial services contracts involving the carrying on of *regulated activities* (see *EG* 10.16 and *EG* 10.17).
- ...
- 1.2.4 G ...
- (2) Under regulation 14 of the Regulations the *FCA* has a duty to pass details of these cases to the ~~OFT~~ CMA.
- (3) The ~~OFT~~ CMA also publishes details of cases that it, and other qualifying bodies, have dealt with in accordance with the ~~OFT's~~ CMA's duties under regulation 15 of the Regulations.
- ...
- 1.4.2 G There are three main ways in which we might receive a complaint from a *consumer* or other person. These are:
- ...
- (3) from the ~~OFT~~ CMA.
- ...
- 1.4.5 G (1) ...

- (2) In some cases, it might be appropriate for us to use other powers to deal with issues identified under the Regulations. The powers available to the *FCA* under the *Act* may vary depending on the *regulated activities* which the *firm* carries out. For example, the use of the unfair term might involve a breach of a *Principle* or a *rule* in *COBS*, *CONC*, *MCOB* or *ICOBS*. If so, the *FCA* might also address the issue as a *rule* breach.

...

...

1.5.1 G ...

- (3) As part of their risk management, ~~firms~~ *firms* that have not themselves given an undertaking or been subject to a court decision should remain alert to undertakings or court decisions about other *firms*, since these will be of potential value in indicating the likely attitude of the courts, the *FCA*, the ~~OFF~~ *CMA* or other qualifying bodies to similar terms or to terms with similar effects.

**SUP 6 Annex 5D Variation of Permission (VOP) Application Consumer Credit
Activities (form and notes)**



Variation of Permission (VOP) Application

Consumer Credit Activities

Firm Name

Firm Reference Number

Important information you should read before completing this form

Purpose of this form

This form is **only** for firms wishing to change the scope of their permission for **consumer credit business**. You must answer all sections.

The notes that accompany the forms will help you complete the questions. They also explain why we need the information that we are asking for.

We will only grant an application to vary the permission of a firm if we are satisfied it meets conditions known as the threshold conditions. We need the information in this form so we can assess whether the applicant firm can continue to satisfy the threshold conditions.

It is important that you give accurate and complete information and disclose all relevant information. If you do not, you may be committing a criminal offence, it may increase the time taken to assess your application and may call into question your suitability to be authorised.

Submit your application to:

If the appropriate regulator is the FCA send to:

consumercreditVOP@fca.org.uk

If the appropriate regulator is the PRA send to:

Assessment and Monitoring Team
The Prudential Regulation Authority
20 Moorgate
London
EC2R 6DA

Contents of this form

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1

Contact details and timings for this application

We need this information in case we need to contact you when we assess this application.

Contact for this application

1.1 Details of the person we should contact about this application.

Title	
First names	
Surname	
Job title	
Business address	
Postcode	
Phone number (including STD code)	
Email address	

Timings for this application

1.2 Does the applicant firm have any timing factors that it would like us to consider?

We will attempt to process your application as quickly as possible. If you wish your application to be granted by a specific date, we will try to do so. If we cannot, we will contact you with the reason why. However, please note that we must determine an application for a variation of permission once we have received it and deemed it to be complete within six months of it becoming complete.

2

Variation of Permission – Consumer Credit activities

Tell us what it is you wish to do to change your firm's permission.

2.1 Answer this section if you wish to do the following:

- add a new consumer credit activity to your permission;
- delete an activity from your permission; or
- change, add or delete a limitation.

If you wish to add or amend several activities in different ways, copy this page and attach it to this form.

Select activity(ies)			
Add new activity	Amend current activity	Delete activity	
<u>Credit Activities</u>			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Credit Broking
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Operating an electronic system related to lending
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Debt adjusting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Debt counselling
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Debt collecting
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Debt administration
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into regulated credit agreement as lender (excluding high-cost short-term credit, bill of sale loan agreement, and home-collected credit loan agreement)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement (excluding high-cost short-term credit, bill of sale loan agreement, and home-collected credit loan agreement)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into a regulated home-credit loan agreement as lender
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise the lender's rights and duties under a regulated home-credit loan agreement
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into high-cost short-term credit as lender
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise the lender's rights and duties in relation to high-cost short-term credit
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into a bill of sale loan agreement as lender
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise the lender's rights and duties under a bill of sale loan agreement
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Entering into a regulated consumer hire agreement as owner
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exercising or having the right to exercise owner's rights and duties under a regulated consumer hire agreement
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Providing credit information services
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Providing credit references

Limitation(s) on your firm's activity(ies)

- Add a new limitation
- Delete a current limitation
- Amend a current limitation

Enter the limitation(s) below, clearly indicating the amendments if applicable.

Requirement(s)

2.2 Are you adding, amending or deleting a requirement on your firm's permission? (tick all that are applicable)

- Adding a new requirement ▶ Enter a non-standard requirement below.
- Amending a current requirement ▶ Enter the current requirement along with the proposed changes.
- Deleting a current requirement ▶ Enter the current requirement.
- No ▶ Continue to Section 3

3

Variation of Permission – Client Money

Tell us what it is you wish to do to change your firm's client money permission.

3.1 Does your firm wish to change its client money or assets permission?

- No ▶ Continue to Section 4
- Yes ▶ Answer the relevant questions in this section

3.2 What is the firm able to do now, and how does it wish to change its permission for client money?

Firm is currently able to:	Firm wishes to be able to:
<input type="checkbox"/> Hold and control client money	<input type="checkbox"/> Hold and control client money
<input type="checkbox"/> Not hold and not control client money	<input type="checkbox"/> Not hold and not control client money

3.3 Are you applying to stop holding client money?

- No ▶ Continue to Question 3.4
- Yes ▶ Please tick this box if you have included a report from your auditors confirming that you have done this and it has either been paid back to the clients concerned or transferred to another entity that is authorised to hold it.

If you cannot confirm the above option, explain further below.

3.4 Are you applying to hold client money?

- No ▶ Continue to Section 4
- Yes ▶ Continue to Question 3.5

3.5 Is the account held at an approved bank that meets the requirement imposed under CASS?

- Yes ▶ Continue to Question 3.7
- No ▶ Explain why below

3.6 Have you read and understood the Client money rules that you are required to follow?

Yes ▶ Continue to Section 4

No ▶ Explain why below

4

Reason for Variation

Tell us why you are applying to change your firm's permission.

We need to know why your firm is applying to change its permission. You should give as much information as possible, including:

- how this change will affect your firm and the long-term strategy for your business;
- any new operational, legal, market risks that you have identified and will need to consider; and
- details on any outsourcing.

5

Threshold Conditions

We need to know whether the firm will continue to satisfy the threshold conditions as a result of the change in its permission.

The threshold conditions are the minimum conditions a firm is required to satisfy, and continue to satisfy, to be given and retain Part 4A permission. The firm must satisfy us these conditions will continue to be met if we grant the application.

You may be asked to provide documentary evidence to support of your answers, either during the application process or at a later point.

The document '**Consumer Credit Business– Notes**' gives details on what we may ask you to provide to support your application.

5.1 Have you reviewed 'Consumer Credit Business– Notes', and submitted the supporting information as indicated by your type of application?

- Yes ▶ Continue to Question 5.2.
- No ▶ Submitting the information now will significantly speed up the application process.

Location of Offices

5.2 Confirm the following:

- if you are a body corporate, that your firm's registered Office (or if you have no registered office, your head office) is located within the United Kingdom; or
- if you are a natural person, that your head office is in, or you are resident in, the United Kingdom.

- Yes ▶ Continue to Question 5.3
- No ▶ Give details below.

Effective Supervision

5.3 As a result of this application, will there be any impact on the appropriate regulator's ability to effectively supervise the firm?

- Yes ▶ Continue to Question 5.4.
- No ▶ Give details below.

Appropriate resources

Prudential category

5.4 What is your firm's current prudential category?

5.5 Will the firm's prudential category change as a result of this application?

- Yes ▶ What prudential category will your firm be in?
 No ▶ Continue to Question 5.8

5.6 What will be the firm's new capital resource requirement?

5.7 Is the firm currently able to meet this new capital requirement?

- Yes ▶ Continue to Question 5.8
 No ▶ Explain why below

Professional Indemnity Insurance

5.8 Are you required to have in place professional indemnity insurance (PII)?

- No ▶ Continue to Question 5.9
 Yes ▶ Do you hold a valid quote or policy for PII that covers the current business of the firm, and the proposed change in business, if applicable, for which the firm is applying?
 Yes ▶ Continue to Question 5.9
 No ▶ Explain why below

Suitability

Compliance

A firm must establish, maintain and carry out a Compliance Monitoring Programme of actions to check it complies, and continues to comply, with regulations.

5.9 Do you have in place a Compliance Manual and a Compliance Monitoring Programme that reflects the firm's current business and the proposed change in business, if applicable, for which you are applying?

- Yes ▶ Continue to Question 5.10
 No ▶ Explain why below

Conduct of Business requirements – Consumer Credit sourcebook

5.10 Is the firm ready, willing and organised to comply with the relevant provisions in the Consumer Credit sourcebook?

- Yes ▶ Continue to Question 5.11
- No ▶ Explain why below

Systems and Controls (SYSC) requirements

5.11 Does the firm continue to meet the SYSC requirements?

- Yes ▶ Continue to Section 6.
- No ▶ Explain why below.

We may contact you for more detailed information to support your application, especially if you are applying to significantly change your firm's current business.

6 Approved Persons

If a firm changes its permission it may need new controlled functions and approved persons or it may no longer require certain controlled functions.

You should consider the effect of this change on approved persons before submitting your application. If you require help, please from the FCA please call the FCA Approved Persons Helpline on+ 44 (0) 845 606 9966 or email iva@fca.org.uk. If you are a dual regulated firm and require help from the PRA, please call PRA Firm Enquiries on +44 (0) 203 461 7000 or email PRA.firmenquiries@bankofengland.co.uk

6.1 Have any individual(s) proposed to perform a new role, for the firm's consumer credit business, been assessed as competent to apply the knowledge and skills necessary to engage in or oversee the activities without supervision? And do they have the necessary qualifications (where relevant) and experience?

Yes ▶ Continue to Section 6.2

No ▶ Explain why below

6.2 The changes you have requested may result in current controlled functions no longer being required. We will remove the specific functions from the profiles of the relevant approved persons. If this applies to your application, do you accept this?

Yes ▶ Continue to Section 7

N/A, as no change to controlled functions ▶ Continue to Section 7

No ▶ Explain why below

7

EEA Notifications and Third-Country Banking and Investment Groups

We need to know about any connected firms outside the UK but within the EEA (European Economic Area). We also need to know whether the firm is a member of a third-country banking and investment group.

EEA Notifications

7.1 Is the firm connected with a firm outside the UK but within the EEA?

- No ▶ Continue to Question 7.2
 Yes ▶ Give details of each connection below

Name of EEA Regulated Firm	Name of EEA Regulator	Firm's Contact at EEA Regulator (include email address)

Third-Country Banking and Investment Groups

7.2 Is the firm a BIPRU firm?

- No ▶ Continue to Section 8
 Yes ▶ Continue to Question 7.3

7.3 Is the firm a member of a third-country (ie outside of the EEA) banking and investment group?

- No ▶ Continue to Section 8
 Yes ▶ We will ask you to give further details once we have received this application.

8

Fees

Changing your firm's permission can generate an application fee and vary your periodic fee.

If an application fee is due, you must be ready to pay it in full at the same time as submitting your application, by credit/debit card (you may pay by bankers draft, cheque or other payable order by prior arrangement only if it is not possible to pay by credit or debit card). If the fee is not paid in full within five working days of the date that we contact you after you submit this form, your application will be returned to you. This fee is non-refundable; and we do not issue invoices for it.

If the proposed application will add credit activities, a fee will apply as listed below. If the firm is adding more than one credit activity, you should pay the highest fee.

8.1 Please state the estimated consumer credit income for the applicant

8.2 Indicate which of the following applies to your application.

Category of change applied for	Estimated Regulated Consumer Credit Income	Fee
<input type="checkbox"/> Limited permission only firm applying for further limited permission activities <input type="checkbox"/> Reduction in scope of permission, eg only removing an activity, removing a customer or investment type from an activity or adding a requirement or a limitation	Not applicable	No Fee
<input type="checkbox"/> Adding straightforward credit activities and the firm is currently approved for credit business other than limited permission: <ul style="list-style-type: none"> • Credit broking • Providing credit information services 	Not applicable	£250
<input type="checkbox"/> Adding straightforward credit activities and the firm is not currently approved for credit business: <ul style="list-style-type: none"> • Credit broking • Providing credit information services 	Up to £50k Over £50k to £100k Over £100k to £250k Over £250k to £1m Over £1m The firm is currently a limited permission credit firm only	<input type="checkbox"/> £300 <input type="checkbox"/> £375 <input type="checkbox"/> £500 <input type="checkbox"/> £750 <input type="checkbox"/> £2,500 <input type="checkbox"/> Twice the above fee is payable
<input type="checkbox"/> Adding moderately complex credit activities <ul style="list-style-type: none"> • Entering into regulated credit agreement as lender (excluding high-cost short-term credit, bill of sale loan agreement, and home-collected credit loan agreement) • Exercising or having the right to exercise lender's rights and duties under a regulated credit agreement (excluding high-cost short-term credit, bill of sale loan agreement, and home-collected credit loan agreement) • Entering into a regulated consumer hire agreement as owner • Exercising, or having the rights to exercise, rights and duties under a regulated consumer hire agreement • Operating an electronic system in relation to lending • Debt collecting • Debt administration 	Up to £50k Over £50k to £100k Over £100k to £250k Over £250k to £1m Over £1m The firm is currently a limited permission credit firm only	<input type="checkbox"/> £400 <input type="checkbox"/> £500 <input type="checkbox"/> £750 <input type="checkbox"/> £2,500 <input type="checkbox"/> £5,000 <input type="checkbox"/> Twice the above fee is payable

<input type="checkbox"/> Adding complex credit activities <ul style="list-style-type: none"> • Entering into a regulated credit agreement as a lender, in relation to high-cost short-term credit, bill of sale loan agreements and home-credit loan agreements • Exercising, or having the right to exercise, the lender's rights or duties under a regulated credit agreement in relation to high-cost short-term credit, bill of sale loan agreements and home-credit loan agreements • Debt adjusting • Debt counselling • Providing credit references 	<p style="text-align: center;">Up to £50k</p> <p style="text-align: center;">Over £50k to £100k</p> <p style="text-align: center;">Over £100k to £250k</p> <p style="text-align: center;">Over £250k to £1m</p> <p style="text-align: center;">Over £1m</p> <p style="text-align: center;">The firm is currently a limited permission credit firm only</p>	<p style="text-align: center;"><input type="checkbox"/> £500</p> <p style="text-align: center;"><input type="checkbox"/> £625</p> <p style="text-align: center;"><input type="checkbox"/> £1,000</p> <p style="text-align: center;"><input type="checkbox"/> £3,500</p> <p style="text-align: center;"><input type="checkbox"/> £7,500</p> <p style="text-align: center;"><input type="checkbox"/> Twice the above fee is payable</p>
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8.3 Please confirm that the contact person for the application is ready to pay by credit or debit card.

- Yes. To make a payment using a credit card, please do not enter the details on this form. We will contact you to ask for the details.
- No, I have made prior arrangements to pay by bankers draft, cheque or other payable order.

9 Declaration and Signature

Warning

Knowingly or recklessly giving us information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). Our rules (SUP 15.6.4R) require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to us and to tell us immediately if materially inaccurate information has been provided. Contravening these requirements may lead to disciplinary sanctions or other enforcement action by us. It should not be assumed that information is known to us just because it is in the public domain or has previously been disclosed to us or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Data Protection

For the purposes of complying with the Data Protection Act, the personal information in this form will be used by the FCA and/or PRA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. It will not be disclosed for any other purposes without the permission of the applicant.

Declaration

By submitting this application form

- ✓ I confirm that the information in this application is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
- ✓ I am aware that it is a criminal offence knowingly or recklessly to give the FCA and/or PRA information that is false or misleading in a material particular.
- ✓ Some questions do not require supporting evidence. However, the records, which demonstrate the applicant firm's compliance with the rules in relation to the questions, must be available to the FCA and/or PRA on request.
- ✓ I will notify the FCA and/or PRA immediately if there is a significant change to the information given in the application pack. If I fail to do so, this may result in a delay in the application process or enforcement action.
- ✓ If this application was submitted by email I confirm that a signed copy has been retained and is available for inspection.

Date	<input type="text"/>
Name of signatory¹	<input type="text"/>
Position² of signatory	<input type="text"/>
Individual Registration Number (if applicable)	<input type="text"/>
Signature	<input type="text"/>

¹ The signatory must be a suitable person of a Senior Management level at the firm.

² eg, director, sole trader, compliance officer, etc.



Variation of Permission (VOP) Application

Purpose of these Notes

These notes will help you fill in the **Consumer Credit** form correctly.

If after reading these notes you need more help, you can:

- visit our website: www.fca.org.uk/your-fca
- consult the Handbook: www.fshandbook.info/FS/index.jsp;
- email consumercreditVOP@fca.org.uk

These notes, while aiming to help you, do not replace the rules and guidance in the Handbook.

Terms in the Form

The form uses the following terms:

'**FCA/PRA**, '**we**', '**our**', or '**us**' refers to the Financial Conduct Authority and the Prudential Regulation Authority.

'**The firm**' refers to the firm applying for the variation of permission.

'**You**' refers to the person(s) signing the form on behalf of the applicant firm.

Contents of this form

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1 Contact details and timings for this application

Contact for this application

1.3 Details of the person we should contact about this application.

This should be an individual in the UK.

Timings for this application

1.4 Does the applicant firm have any timing factors that it would like us to consider?

If you wish your application to be granted by a specific date, for example in time for a product launch, we will try to do so. However, the time taken to determine each application is significantly affected by the quality of the application submitted and whether it is complete. If you leave a question blank, do not sign the declaration or do not attach the required supporting information, we will have to treat the application as incomplete. This will increase the time taken for us to assess your application.

We are required by law to determine applications within the earlier of (a) 6 months of receiving a complete application or (b) 12 months of receiving an incomplete application. However, we aim to make a decision about the application as soon as possible.

2 Variation of Permission – Consumer Credit activities

It is your responsibility to make sure the regulated activities you request adequately cover the activities the applicant firm intends to carry on. Use this section to request any changes you wish to make to the firm's permission.

You need a Permission Notice that matches the applicant firm's needs and covers every aspect of regulated business it wants to carry on. The Permission Notice shows the range of regulated activities the applicant firm will be authorised to carry on. It will also contain what we refer to as 'requirements' and 'limitations'.

Broadly speaking, a limitation is included in the description of a specific regulated activity and will limit how it is carried on, in some way.

A requirement is on the firm to take, or not to take, a specified action (eg, not to hold client money). A requirement may extend to activities of the firm which are not regulated activities.

If the applicant firm carries on a regulated activity that is not set out in its permission notice it could be in breach of FSMA and subject to enforcement action.

3 Variation of Permission – Client Money

The rules and guidance about how applicant firms hold client money are designed to provide an adequate level of protection for consumers.

4 Reason for Variation

No additional notes.

5 Threshold Conditions

Threshold Conditions are the minimum requirements a firm must satisfy to be, and to continue to be, authorised. When we consider the applicant firm's application, we will assess whether you will satisfy, and continue to satisfy, the threshold conditions which are set out in full in Chapter 2 of the Threshold Conditions sourcebook (COND 2) of the Handbook at: www.fshandbook.info/FS/html/handbook/COND/2.

Location of Offices

This is a requirement of Threshold Condition 2.2.

Effective Supervision

The appropriate regulator must be capable of effectively supervising the firm. This is a requirement of Threshold Condition 2.3.

Appropriate resources

We must be satisfied the applicant firm has adequate resources. We assess the quality and quantity of the applicant firm's resources for its:

- financial resources;
- management;
- staff; and
- systems and controls.

This is a requirement of Threshold Condition 2.4.

Prudential category

We differentiate between our financial requirements by putting applicant firms in different prudential categories. The firm will fall into at least one prudential category (including if there is no specific prudential requirement); and it may fall into more than one prudential category, depending on its regulated activities.

The prudential categories relevant to consumer credit activities are set out in the following table:

Table A

PRUDENTIAL CATEGORIES FOR CONSUMER CREDIT FIRMS	
IPRU(INV) sourcebook	Chapter
Firms operating an electronic system in relation to lending	12
CONC sourcebook	Chapter
Debt management firms and not-for-profit debt advisers holding £1 million or more in client money.	10

For other consumer credit activities, there is no specific prudential requirement and you should answer question 5.5 "no".

Compliance

A firm must establish, maintain and carry out a Compliance Monitoring Programme of actions to check it complies, and continues to comply, with regulations. When assessing this application, we need to be satisfied the applicant firm has the appropriate compliance arrangements in place to meet its regulatory obligations. The

applicant firm will need, as a **minimum**, to have in place procedures to meet our rules for the subject areas in the table below. These procedures must be ready for inspection at any time.

5 Threshold Conditions (cont'd)

Supporting Information to Submit With Your Application

For applications to add permission to do the following **for the first time**, the information below **must** be supplied with the application. Failure to do so will lengthen the application process.

As a guide, your VOP application should include the following information:

All firms

- The background to the business;
- Why you are applying to change your firm's permission
- What experience/qualifications you have in this new activity
- Will your staff numbers be increased (if so, by how much)
- How will they be trained and monitored
- Are they incentivised to sell – what products or services and how?
- Details of your systems and controls incorporating the new activity – including IT systems, compliance staff and the governance of the firm.
- Where customers will be sourced from (eg, existing client base or purchase of client bank), including the use of any lead generators or brokers (and how they will be remunerated) and a summary of the financial promotions to take place.
- How will this activity be sold (face-to-face, telephone, through a website?)
- Details of all fees that could be payable by the customer and how they are explained to the customer.
- Details of all charges (for example, for late or early repayment) and how these are communicated to customers
- Details of arrears and default procedures (including how the firm will assess whether the customer is in financial difficulty and any forbearance).
- Details of the procedures in place to mitigate the risk of fraud/crime.
- Details of the procedures in place to mitigate the higher risks of lending to vulnerable customers.
- Business forecast – not just sales, to also include what income is made by fees and charges.

Lenders

Details of how your affordability assessments are carried out

Pawnbrokers

Details of how you will value items

Details of the circumstances in which you will allow a customer to redeem an item and any charges made when this occurs.

Firms applying for high-cost short-term lending

Your forecast should include what percentage of loans you expect to be in arrears and default and what percentage of loans you expect to be refinanced.

Details of how the firm will use continuous payment authorities.

5 Threshold Conditions (cont'd)

Debt Management firms

What are the firms systems and controls to ensure that it provides accurate payments/data/information to creditors?

What are the firms systems and controls regarding its handling of client money?

What information is provided to the customer about the options available to them and the implications and consequences?

What proportion of debtor payments are passed on to creditors?

Debt collection firms

What are the firms systems and controls to ensure the quality of information it receives from creditors?

What are the firms systems and controls to ensure that it provides accurate payments/data/information to creditors?

Firms applying for log book lending

What is the firm's approach to seizing assets?

Details of how any depreciation of asset is calculated

Firms applying as home collected credit providers

The number of employees, agents or brokers who will be selling the products of the firm, how they will be overseen and remunerated and the geographical area of the firms for home-collected credit business.

Credit Brokers

What level of service you provide and whether this is exclusively with one lender or a panel of lenders – how is this communicated with the customer

What is your procedure of refunding any upfront fees?

6 Approved Persons

You must ensure that no individual performs a controlled function until the application has been granted and we have approved the individual to perform the controlled function(s).

What is an approved person?

An approved person is an individual who is approved by us to perform a controlled function for an authorised firm or an appointed representative. To be approved and continue to be approved to perform a controlled function, an individual must:

- meet, and maintain, our criteria for approval (the 'fit and proper test'); and then
- perform their controlled function(s) in line with the Statement of Principles and Code of Practice for Approved Persons (APER) sourcebook of the Handbook.

What is a controlled function?

A controlled function is a function for a regulated business that has particular regulatory significance.

For example, overseeing the firm's systems and controls and being responsible for compliance with our rules. There are different controlled functions relevant to the different types of businesses we regulate. Some controlled functions are required for every firm, others will depend on the nature of your business.

Each controlled function has a 'CF' number. You can find a full list of all the controlled functions and an explanation of each one at: www.fshandbook.info/FS/html/handbook/SUP/10.

The Approved Person 'Form A' application form is found at: www.fca.org.uk/your-fca

7 EEA Notifications and Third-Country Banking and Investment Groups

EEA Notifications

We need to know about any connected firms outside the UK but within the EEA because we may contact the relevant EEA Home State Regulators of these connected firms, as part of the application process.

Third-Country Banking and Investment Groups

Definition of BIPRU firm

BIPRU firm has the meaning set out in the FCA or PRA handbook as appropriate.

Definition of third-country banking and investment group

A third-country banking and investment group is a banking and investment group that is:

- (a) headed by:
 - (i) a credit institution;
 - (ii) an asset management company;
 - (iii) an investment firm; or
 - (iv) a financial holding company;that has its head office outside the EEA; and
- (b) not part of a wider EEA banking and investment group.

8 Fees

The application fee is an integral part of your application. If you do not pay the appropriate fee in full with the completed application pack or when we contact you, we will not process your application.

For further information on fees, see FEES 3 Annex 1.

You should note the firm's periodic fee may change as a result of this application. See www.fca.org.uk/your-fca for further details.

9 Declaration and Signature

This must be the person who is responsible for making the application. This should be a suitable person of appropriate seniority at the firm.



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