

## 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 7.10.1 R 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 7.2.1 R (and its accompanying *guidance*) which requires *firms* to establish and implement policies and procedures for the fair and appropriate treatment of vulnerable *customers*.



7.11 Disclosures relating to “authority” or “status”

- 7.11.1

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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

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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

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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

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Examples of where a *firm* is likely to contravene ■ CONC 7.11.6 R 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* or in respect to activity that would be *consumer credit lending* but for article 60C(4A) of the *Regulated Activities Order*.

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]

**7.12.3**

**G**

- (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*]

- (1) ■ **CONC 1.2.2 R** 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 7.9.7 R**; 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

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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 *data protection legislation* and, in particular, to adhere to the data protection principles.

[Note: paragraph 3.16 of DCG]
- 7.13.2

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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

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 1.2.2 R 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, Acknowledgement, 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 7.14.10 R** 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 7.14.10 R.

- (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]
- 7.15.10

R

**Complaints to the Financial Ombudsman Service and initiating legal proceedings**

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
- [deleted]



7.17 Notice of sums in arrears under P2P agreements for fixed-sum credit

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 7.17: see ■ CONC TP 4.3]

Application

- 7.17.1
- R
- This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement* for *fixed-sum credit*.
- 7.17.2
- R
- (1) Subject to (2), this section does not apply where the *P2P agreement* provides for *credit* of less than £50.

(2) Paragraph (1) does not apply where two or more *P2P agreements* in relation to the same *borrower* (whether or not with the same *lender*) are entered into at or about the same time.

(3) Where (2) applies, the *firm's* obligations in ■ CONC 7.17 apply as if all of the *P2P agreements* made with a *borrower* at or about the same time were a single agreement.

Notice of sums in arrears for fixed-sum credit

- 7.17.3
- R
- A *firm* must comply with this section where the following conditions are satisfied:

(1) a *borrower* is required to have made at least two payments under the agreement before that time;

(2) the total sum paid under the agreement by the *borrower* is less than the total sum required to have been paid before that time;

(3) the amount of the shortfall is no less than the sum of the last two payments which the *borrower* is required to have made before that time;

(4) the *firm* is not already under a duty to give the *borrower* notices under ■ CONC 7.17.4 R in relation to the agreement;

(5) the *lender* is not already under a duty to give the *borrower* notice under section 86B of the CCA; and

**7.17.4**

**R**

(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*.

(1) The *firm* must, within the period of 14 days beginning with the day on which the conditions in ■ CONC 7.17.3 R are satisfied, give the *borrower* a notice including the information set out in ■ CONC 7.17.7 R and ■ CONC 7.17.8 R.

(2) After giving that notice, the *firm* must give the *borrower* further notices including the information in ■ CONC 7.17.7 R and ■ CONC 7.17.8 R 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 7.17.4 R will cease when either of the conditions mentioned in (2) is satisfied but, if either of those conditions is satisfied before the notice required by ■ CONC 7.17.4R (1) is given, the duty will not cease until that notice is given.

(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 7.17.4 R with a copy of the current arrears information sheet under section 86A of the CCA with the following modifications:

(-a) [deleted]

(a) for the numbered 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 numbered 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.";

- (ba) For the bullet point headed "If you live in England and Wales, you may be entitled to 'breathing space'" substitute:

"You may be entitled to 'breathing space' – a defined period where you have protections from legal action taken against you. Speak to a debt adviser who can set out your options.";

- (c) For the paragraph headed "Doing nothing could make things worse." substitute:

"Doing nothing could make things worse.

You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase."

- (5) The *firm* must not charge the *borrower* a fee in connection with preparation of or the giving of the notice required by ■ CONC 7.18.4 R.

**7.17.6** **R** In this section "payments" means payments to be made at predetermined intervals provided for under the terms of the agreement.

#### **Content of arrears notices: fixed-sum credit**

**7.17.7** **R** The notice required by ■ CONC 7.17.4 R must contain the following information:

- (1) a form of wording to the effect that the notice is given in compliance with the *rules* because the *borrower* is behind with the sums payable under the agreement;
- (2) a form of wording encouraging the *borrower* to discuss the state of his account with the *firm*;
- (3) the date of the notice;
- (4) (a) the name, telephone number or numbers, the postal address, and, where appropriate, any other address of the *firm*; or  
(b) where the *firm* and the *borrower* have entered into an arrangement under which the *borrower* has been given details of a particular employee or category of employee of the *firm* whom the *borrower* is entitled to contact for all the *borrower's* dealings with the *firm*, the *firm* may, instead of including the telephone number or numbers in (a), refer to that arrangement;
- (5) a description sufficient to identify any agreements and the opening balance under any agreements at the date on which the duty to give the notice arose;

- (6) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:

"Default sums and interest

You may have to pay default sums and interest in relation to the missed or partly made payments referred to in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice."; or

- (b) in any other case, a statement in the following form:

"Default sums and interest

You will not incur any default sums or extra interest in relation to the missed or partly made payments referred to in this notice. This notice does not take account of any payments received after the date of the notice.";

- (7) a statement in the following form:

"Notices

For so long as you continue to be behind with your payments by any amount, you will be sent notices about this at least every six months. We are not required to send you notices more frequently than this, even if you get further behind with your payments in between notices."; and

- (8) a statement in the following form:

"Financial Conduct Authority Information Sheet

This notice should include a copy of the current arrears information sheet prepared by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example to think carefully before borrowing money to repay debts as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Financial Conduct Authority information sheet for more information about how to get advice on dealing with your debt.".

### Content of first required arrears notices

7.17.8

**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 ■ CONC 7.17.9R (4) are to be construed as a reference to all accounts maintained by the *firm* (on behalf of a *lender*) which relate to the agreement with the *borrower*.



## 7.18 Notice of sums in arrears under P2P agreements for running-account credit

[**Note:** Until the end of 30 September 2014, transitional provisions apply to ■ CONC 7.18: see ■ CONC TP 4.4]

### Application

- 7.18.1** **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement* for running account credit.

### Notice of sums in arrears for running account credit

- 7.18.2** **R** A *firm* must comply with this section where the following conditions are satisfied:
- (1) a *borrower* is required to have made at least two *repayments* under the agreement;
  - (2) the last two *repayments* which the *borrower* is required to have made before that time have not been made;
  - (3) the *firm* has not already been required to give a notice under ■ CONC 7.18.3 R in relation to the agreement;
  - (4) the *lender* is not already under a duty to give the *borrower* notice under section 86C of the CCA; and
  - (5) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the *borrower*.

- 7.18.3** **R**
- (1) The *firm* must, when the *firm* next sends a statement to the *borrower*, give or send the *borrower* a notice including the information set out in ■ CONC 7.18.5 R.
  - (2) A *firm* must accompany the notice required by (1) with a copy of the current arrears information sheet under section 86A of the CCA with the following modifications:
    - (-a) for the heading “Arrears” substitute “Arrears – peer-to-peer lending”;

- (a) for the bullet point headed “Work out how much money you owe” substitute:  
  
“Work out how much money you owe. To do this, you will need to make a list of all those you owe money to. A debt adviser can help you.”
- (b) for the bullet point headed “Contact the organisations you owe money to” substitute:  
  
“Contact the peer-to-peer (P2P) platform which arranged your loan. Let them know you are having problems. They may be able to discuss options for paying back what you owe.”
- (c) For the paragraph headed “Doing nothing could make things worse.” substitute:  
  
“Doing nothing could make things worse.  
  
You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase.”.
- (3) The *firm* must not charge the *borrower* a fee in connection with the preparation of or the giving of the notice required by (1).
- (4) The notice required by (1) may be incorporated in a statement or other notice which the *firm* gives to the borrower in relation to the agreement by virtue of *FCA rules* or the *CCA*.

**7.18.4** **R** In this section “payments” means payments to be made at predetermined intervals provided for under the terms of the agreement.

#### **Content of arrears notices: running account credit**

**7.18.5** **R** The notice referred to in ■ CONC 7.18.3 R must contain the following information:

- (1) a form of wording to the effect that it is given in compliance with the *rules* because the *borrower* is behind with his payments under the agreement;
- (2) a form of wording encouraging the *borrower* to discuss the state of his account with the *firm*;
- (3) the date of the notice;
- (4) a description of the agreement sufficient to identify it;
- (5) (a) the name, telephone number, postal address and, where appropriate, any other address of the *firm*; or  
(b) where the *firm* and the *borrower* have entered into an arrangement under which the *firm* has given the *borrower* details of a particular employee or category of employee of the *firm* whom the *borrower* is entitled to contact for all his dealings with

the *firm*, the *firm* may, instead of including the telephone number or numbers referred to in (a), refer to that arrangement;

- (6) in relation to each of the last two payments which the *borrower* is required under the agreement to have made and which have not been paid or not fully paid:
- (a) the amount payable;
  - (b) the date on which that amount became due;
  - (c) in the event that the *borrower* has paid part of that amount, the amount the *borrower* has paid and the date on which that payment was made;
  - (d) the nature of the amount due; and
  - (e) the aggregate of the amounts payable as shown under (a), less the aggregate of the amounts paid as shown under (c);

- (7) a statement in the following form:

"Missed and partly made payments

This notice does not give details of missed or partly made payments previously notified whether or not they remain unpaid."

- (8) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:

"Default sums and Interest

You may have to pay default sums and interest in relation to the missed or partly made payments indicated above in addition to any default sums and interest already included in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice."; or

- (b) in any other case, a statement in the following form:

"Default sums and Interest

You will not incur any default sums or extra interest in relation to the missed or partly made payments indicated above. This notice does not take account of any payments received after the date of the notice."; and

- (9) a statement in the following form:

"Financial Conduct Authority Information Sheet

This notice should include a copy of the current arrears information sheet issued by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example, to think carefully before borrowing money to repay debts, as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Financial Conduct Authority information sheet for more information about how to get advice on dealing with your debt."

- 7.18.6 **R** Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the *firm* must include wording explaining why it is not such a demand.
- 7.18.7 **R**
- (1) Subject to (2), where the total amount which the *borrower* has failed to pay in relation to the last two payments due under the agreement prior to the date on which the *firm* came under a duty to give the *borrower* a notice under ■ CONC 7.18.3 R is not more than £2, the notice:
    - (a) need not include any of the information or statements referred to in ■ CONC 7.18.4 R;
    - (b) but, in that event, shall contain a statement in the following form:

"You have failed to make two minimum payments

Failing to make minimum payments can mean that you have broken the terms of this credit agreement. This could result in your having to pay additional costs. A copy of the Financial Conduct Authority Arrears information sheet is enclosed, which contains more information about what to do when you get behind with your payments.";
  - (2) Paragraph (1) does not apply where at the date on which the duty to give notice arose a default sum or other charge has become payable as a result of the *borrower's* failure to pay sums as set out in (1).





## 7.19 Notice of default sums under P2P agreements

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 7.19: see ■ CONC TP 4.5]

### 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 7.19.4 R 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 7.19.4 R 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.