

Chapter 7

Arrears, default and recovery (including repossessions)

		7.1 Application
		Who? What?
7.1.1	R	<p>This chapter applies, unless otherwise stated in or in relation to a <i>rule</i>, to:</p> <ul style="list-style-type: none">(1) a <i>firm</i> with respect to <i>consumer credit lending</i>;(2) a <i>firm</i> with respect to <i>consumer hiring</i>;(3) a <i>firm</i> with respect to <i>operating an electronic system in relation to lending</i>, in relation to a <i>borrower</i> under a <i>P2P agreement</i>;(4) a <i>firm</i> with respect to <i>debt collecting</i>.
7.1.1A	R	<ul style="list-style-type: none">(1) To the extent that a <i>rule</i> in this chapter does not already apply to <i>TP firms</i> as a result of ■ GEN 2.2.26R, it applies to them so far as the <i>rule</i> would have applied were it in effect before <i>IP completion day</i>.(2) To the extent that a <i>rule</i> in this chapter does not already apply to <i>Gibraltar-based firms</i> as a result of ■ GEN 2.3.1R, it applies to them so far as the <i>rule</i> would have applied were it in effect before <i>IP completion day</i>.
7.1.2	G	<p>The following sections provide otherwise for application:</p> <ul style="list-style-type: none">(1) ■ CONC 7.12 (lenders' responsibilities in relation to debt) applies only to <i>firms</i> in respect of <i>consumer credit lending</i> or in respect of activity that would be <i>consumer credit lending</i> but for article 60C(4A) of the <i>Regulated Activities Order</i>;(2) ■ CONC 7.17 to ■ CONC 7.19 apply only to <i>firms operating electronic systems in relation to lending</i> in relation to <i>borrowers</i> under <i>P2P agreements</i> as set out in those sections.
7.1.3	G	<ul style="list-style-type: none">(1) In accordance with ■ CONC 1.2.2 R <i>firms</i> must ensure that their employees and agents comply with <i>CONC</i> and must take reasonable steps to ensure that other <i>persons</i> acting on the <i>firm's</i> behalf act in accordance with <i>CONC</i>.(2) The <i>rule</i> in ■ CONC 1.2.2 R is particularly important in relation to the requirements in ■ CONC 7, for example, in dealing with an <i>individual</i>

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.

7.1.3A

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In this chapter, the expression “*regulated credit agreement*” includes a *credit agreement* that is an exempt agreement by virtue of article 60C(4A) of the *Regulated Activities Order* except for the purposes of the following:

- (1) ■ CONC 7.5.1G;
- (2) ■ CONC 7.6; and
- (3) ■ CONC 7.7.4G.

Agreements where there is a guarantor etc

7.1.4

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- (1) In this chapter, except for ■ CONC 7.6.15AG:

- (a) a reference to a *borrower*, a *customer* or a *hirer* includes a reference to an *individual* other than the *borrower* or the *hirer* (in this chapter, referred to as “the guarantor”) who has provided a guarantee or an indemnity (or both) in relation to:
 - (i) a *regulated credit agreement*; or
 - (ii) a *regulated consumer hire agreement*; or
 - (iii) a *P2P agreement* in respect of which the *borrower* is an *individual*;

where it would not do so but for this *rule*;
- (b) a reference (other than in this *rule*) to a *credit agreement*, a *consumer hire agreement* or a *P2P agreement* includes a reference to the document that includes the guarantee or the indemnity (or both);
- (c) a reference to a *repayment* includes a reference to a payment due under the guarantee or under the indemnity;
- (d) a reference to paying or repaying the debt includes a reference to making (in whole or in part) a payment due under the guarantee or under the indemnity; and
- (e) a reference to the adequate explanation required by ■ CONC 4.6.2R includes a reference to the adequate explanation required by ■ CONC 4.6.5R.

- (2) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

- (3) This *rule* does not apply to ■ CONC 7.3.1G, ■ CONC 7.4.1R, ■ CONC 7.4.2R, ■ CONC 7.5.1G, ■ CONC 7.6.2AR, ■ CONC 7.6.2BG, ■ CONC 7.15.3G, ■ CONC 7.15.4R, ■ CONC 7.15.5G, or ■ CONC 7.17 to ■ CONC 7.19.

- (4) A reference in this chapter to a *customer* or *borrower* does not include the guarantor under a *credit agreement* that is an exempt

agreement by virtue of article 60C(4A) of the *Regulated Activities Order*.

7.1.5

G In relation to ■ CONC 7.1.4R(1)(a), *firms* are reminded that the definitions of *customer* and *borrower* include, in relation to *debt collecting* and *debt administration*, a *person* providing a guarantee or indemnity under the agreement (other than a *credit agreement* that is an exempt agreement by virtue of article 60C(4A) of the *Regulated Activities Order*). (See ■ CONC 7.3.1G(2) and ■ CONC 7.3.1G(3).).

		<div>7.2</div> <div>Clear, effective and appropriate policies and procedures in respect of customers in or approaching arrears or in default</div>	
		<div>Arrears and default policies</div>	
7.2.1	R	<div>A <i>firm</i> must establish and implement clear, effective and appropriate policies and procedures for:</div> <div><div>(1) dealing with <i>customers</i> who are in or approaching arrears or in default;</div><div>[Note: paragraph 7.2 of <i>ILG</i>]</div><div>(2) the fair and appropriate treatment of <i>customers</i>, who the <i>firm</i> understands or reasonably suspects to be vulnerable.</div><div>[Note: paragraphs 7.2 and 7.2(box) of <i>ILG</i> and 2.2 (box) of <i>DCG</i>]</div></div>	7
7.2.2	G	<div><i>Customers</i> who have mental health difficulties or mental capacity limitations may fall into the category of vulnerable <i>customers</i>.</div> <div>[Note: paragraph 2.2 (box) of <i>DCG</i>]</div>	
7.2.2A	G	<div>In developing policies and procedures in accordance with ■ CONC 7.2, a <i>firm</i> should have regard to the FCA’s Guidance for firms on the fair treatment of vulnerable customers (FG21/1) (https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf).</div>	
7.2.3	G	<div>In developing procedures and policies for dealing with <i>customers</i> who may not have the mental capacity to make financial decisions, <i>firms</i> 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”.</div> <div>[Note: paragraph 3.7r (box) of <i>DCG</i>]</div>	
7.2.4	R	<div>A <i>firm</i> must ensure that the effectiveness of any policies and procedures put in place further to ■ CONC 7.2.1R, and the <i>firm</i>’s compliance with them, is reviewed at appropriate intervals.</div>	

7.2.5

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In order to comply with its obligations under ■ CONC 7.2, a *firm* should ensure that the review required by ■ CONC 7.2.4R includes consideration of the full extent of support provided to some *customers* under this chapter, and does not only assess individual *customer* interactions in isolation.

		<div>7.3</div> <div>Treatment of customers in or approaching arrears or in default (including repossessions): lenders, owners and debt collectors</div>
7.3.1	G	<div><div>(1) In relation to <i>debt collecting</i> and <i>debt administration</i>, the definition of <i>customer</i> refers to an <i>individual</i> from whom the payment of a debt is sought; this would include where a <i>firm</i> mistakenly treats an <i>individual</i> as the <i>borrower</i> under an agreement and mistakenly or wrongly pursues the <i>individual</i> for a debt.</div><div>[Note: paragraph 1.12 of DCG]</div><div><div>(2) In relation to <i>debt collecting</i> and <i>debt administration</i>, the definitions of <i>customer</i> and <i>borrower</i> are given extended meanings to include, as well as those other people they generally include, a <i>person</i> providing a guarantee or indemnity under a <i>credit agreement</i> and also a <i>person</i> to whom rights and duties under the agreement are passed by assignment or operation of law. This reflects article 39M of the <i>Regulated Activities Order</i>.</div><div>(3) However, in accordance with ■ CONC 7.1.4R(4), with respect to <i>debt collecting</i>, the definitions of <i>customer</i> and <i>borrower</i> do not include the guarantor under a <i>credit agreement</i> that is an exempt agreement by virtue of article 60C(4A) of the <i>Regulated Activities Order</i>.</div></div></div>
7.3.2	G	<div>Dealing fairly with customers in or approaching arrears or in default</div> <div>When dealing with <i>customers</i> in or approaching arrears or in default, a <i>firm</i> should pay due regard to its obligations under <i>Principle 12</i> (Consumer Duty) and ■ PRIN 2A, or <i>Principle 6</i> (Customers' interests), as applicable.</div> <div>[Note: paragraphs 7.12 of ILG and 2.2 of DCG]</div>
7.3.2A	R	<div>Forbearance and due consideration</div> <div>[deleted]</div>
7.3.3	G	<div>Where a <i>customer</i> under a <i>regulated credit agreement</i> fails to make an occasional payment when it becomes due, a <i>firm</i> should, in accordance with <i>Principle 12</i> and ■ PRIN 2A, or <i>Principle 6</i>, as applicable, allow for such unmade payments to be made within the original term of the agreement unless:</div>

- (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

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A *firm* must treat *customers* in or approaching arrears or in default with forbearance and due consideration.

[Note: paragraphs 7.3 and 7.4 of *ILG* and 2.2 of *DCG*]

7.3.4A

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A *firm* should regard a *customer* as approaching arrears when the *customer* indicates to the *firm* that they are at risk of not meeting one or more *repayments* when they fall due.

7.3.4B

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When determining appropriate forbearance and treating the *customer* with due consideration, a *firm* must take into account the individual circumstances of the *customer* of which the *firm* is or should be aware.

7.3.5

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Examples of treating a *customer* with forbearance and due consideration would include the *firm* doing one or more of the following, as may be appropriate to the *customer* in the circumstances:

- (1) 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 no payments, reduced payments or token payments for a reasonable period of time 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;
- (4) agreeing a repayment arrangement with the *customer* that allows the *customer* a reasonable period of time to repay the debt;
- (5) transferring the debt to an alternative *credit agreement* (refinancing) to help the *customer* reduce the debt over a reasonable period of

		time in such a way that does not adversely affect the <i>customer's</i> financial situation;
		(6) in relation to a <i>firm</i> that takes any article in <i>pawn</i> under a <i>regulated credit agreement</i> :
		(a) where the redemption period has not ended, extending the redemption period; or
		(b) where the redemption period has ended, refraining from giving the <i>customer</i> notice of intention to sell an item of <i>pawn</i> for a reasonable further period, or if notice of intention to sell has been given, suspending the sale for a reasonable further period.
7.3.5-A	G	A <i>firm</i> should only take the steps in ■ CONC 7.3.5G(6) where it is in the <i>customer's</i> interests. In considering whether it is in the <i>customer's</i> interests, a <i>firm</i> should consider the realistic prospects of a <i>customer</i> recovering the item of <i>pawn</i> and the equity in the item.
7.3.5A	G	The examples in ■ CONC 7.3.5G are not exhaustive.
7.3.5B	R	A <i>firm</i> must take all reasonable steps to ensure that any repayment arrangements agreed with <i>customers</i> (see ■ CONC 7.3.5G(4)) are sustainable.
7.3.5C	G	(1) A repayment arrangement is unlikely to be sustainable if it has the result that the <i>customer</i> cannot meet their <i>priority debts</i> and essential living expenses.
		(2) <i>Priority debts</i> and essential living expenses include, but are not limited to, payments for mortgage, rent, council tax, food and utility bills.
7.3.5D	R	Where a <i>firm</i> assesses income and expenditure, it must do so in an objective manner.
7.3.5E	G	When complying with ■ CONC 7.3.5DR:
		(1) the assessment should be informed by sufficiently detailed information;
		(2) a <i>firm</i> may have regard to the spending guidelines in the Standard Financial Statement or an equivalent tool; and
		(3) where the <i>customer</i> is borrowing for business purposes, a <i>firm</i> may take into account information relating to the <i>customer's</i> business, including its cash flow.
7.3.5F	G	A <i>firm</i> should have clear written policies setting out how and in what circumstances it conducts income and expenditure assessments.

7.3.5G	R	<p>(1) This <i>rule</i> applies where:</p> <ul style="list-style-type: none"> (a) a <i>firm</i> has put in place a repayment arrangement as a forbearance measure; and (b) the <i>customer</i> is meeting the terms of that arrangement. <p>(2) The <i>firm</i> must reduce, waive or cancel any further interest or charges to the extent necessary to ensure that the level of debt under the arrangement does not rise for the period of that arrangement.</p>
7.3.5H	G	<p>The extent to which the <i>firm</i> is required to reduce, waive or cancel any further interest or charges may vary over the term of the arrangement. If a <i>customer's</i> circumstances change so that they can pay larger amounts under the repayment arrangement, the <i>firm</i> will not be required to waive as much interest, fees or charges to prevent the balance from escalating.</p>
7.3.5I	R	<p>A <i>firm</i> must take reasonable steps to ensure that any forbearance or due consideration provided remains appropriate.</p>
7.3.5J	G	<p>What is reasonable in any given case will depend on the <i>customer's</i> circumstances and the nature of the forbearance or due consideration provided, but may include reviews at appropriate intervals and responding as necessary. It will also involve reacting appropriately to any relevant information the <i>firm</i> is otherwise made aware of, such as correspondence from a debt adviser.</p>
7.3.6	G	<p>Where a <i>customer</i> is in default or in arrears difficulties, a <i>firm</i> should allow the <i>customer</i> reasonable time and opportunity to repay the debt.</p> <p>[Note: paragraph 2.2 of DCG]</p>
7.3.7	G	<p>[deleted]</p>
7.3.7A	G	<p>(1) If a <i>customer</i> is in or approaching arrears or in default, the <i>firm</i> should, where appropriate:</p> <ul style="list-style-type: none"> (a) inform the <i>customer</i> that free and impartial money guidance and debt advice is available from <i>not-for-profit debt advice bodies</i> and can be accessed through a range of delivery channels, including digital tools; (aa) effectively communicate to the <i>customer</i> the potential benefits of accessing money guidance or free and impartial debt advice from <i>not-for-profit debt advice bodies</i>; and (b) refer the <i>customer</i> to a <i>not-for-profit debt advice body</i>. <p>(2) A <i>firm</i> may refer the <i>customer</i> to a <i>not-for-profit debt advice body</i> by, for example, providing the <i>customer</i> with a copy of the current arrears information sheet under section 86 of the CCA, or with the name and contact details of a <i>not-for-profit debt advice body</i> or <i>MoneyHelper</i>; or directly transferring the <i>customer's</i> call to a <i>not-for-profit debt advice body</i>.</p>

- (3) In addition, the *firm* may provide the *customer* with the name and contact details of another *authorised person* who has *permission* for *debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.
- (4) Where possible, a *firm* should make available to the *customer* a record of any income and expenditure assessment that the *firm* has made to enable the *customer* to share the record with other lenders and debt advice providers.
- (5) A *firm* should consider whether the *customer* would benefit from a specialist source of debt advice. For example, a self-employed *customer* may benefit from being made aware of business debt advice providers.
- (6) When considering how to provide appropriate help and support to *customers*, a *firm* may have regard to the Money and Pensions Service Strategic toolkit for creditors.

7.3.8

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An example of where a *firm* is likely to contravene *Principle 12* and **■ PRIN 2A**, or *Principle 6*, as applicable, and **■ CONC 7.3.4 R** is where the *firm* does not allow for alternative, affordable payment amounts to repay the debt due in full, where the *customer* is in or approaching arrears or in default 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

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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

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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*]

7.3.10A

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- (1) An example of behaviour by or on behalf of a *firm* which is likely to contravene **■ CONC 7.3.10R** and *Principle 12* and **■ PRIN 2A**, or *Principle 6*, as applicable, is pressurising a *customer* to raise funds to repay a

debt by arranging the receipt of a lump sum from the *customer's pension scheme*.

- (2) *Firms* are also reminded of ■ PERG 12.6G which contains *guidance on the regulated activity of advising on conversion or transfer of pension benefits*.

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 7.3.11 R 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. Where appropriate, a *firm* can take into account the period of time that the debt was subject to a *Debt Respite moratorium* when determining what is a reasonable period.

[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]

Information provided to customers

- 7.3.13A** G
- (1) When engaging with *customers* in or approaching arrears or in default, *firms* are reminded of their obligations to communicate with *customers* in accordance with Principle 12 and ■ PRIN 2A, or Principle 7, as applicable.
 - (2) A *firm* should make available to *customers* in or approaching arrears or in default, timely, clear and understandable information which:
 - (a) takes into account the individual circumstances of the *customer*;
 - (b) is sufficient to enable the *customer* to understand their financial position in relation to their debt, including how it is reported to the *customer's* credit file; and
 - (c) is sufficient to enable the *customer* to understand their options in relation to their debt, including the potential impact of any forbearance or other support on their overall balance and how it will be reported to the *customer's* credit file.
 - (3) A *firm* should consider the most appropriate way to engage and communicate with a *customer*, and support *customers* to engage through appropriate channels, changing the channel if necessary to enable the *customer* to engage with the *firm* effectively.

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, goods or vehicles other than as a last resort, having explored all other possible options.

[Note: paragraphs 7.14 of *ILG* and 3.7t of *DCG*]

- 7.3.17A** **R** A *firm* must not commence or continue repossession action where a forbearance arrangement is in place for as long as the *customer* is meeting the terms of that arrangement.

- 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 or approaching arrears or in default 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 on *land* 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*]

7.3.20

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- (1) Where a *customer* has informed the *firm* that they intend to access debt help or money guidance, the *firm* should allow the *customer* reasonable time to access it before considering whether to commence repossession action.
- (2) A *firm* may take action to repossess *goods* or *vehicles* as a last resort – for example, when the *firm* has made reasonable attempts to engage with the *customer* and the *customer* has not engaged.
- (3) When considering whether repossession is an appropriate course of action, a *firm* should have regard to all aspects of the financial impact on the *customer*, including asset depreciation if repossession is delayed.
- (4) A *firm* should inform the *customer* of the impact of the *firm* suspending any repossession actions, including on the value of *goods* or *vehicles*.
- (5) A *firm* taking or considering taking enforcement action should have regard to the *FCA's* Guidance for firms on the fair treatment of vulnerable customers (FG21/1) (<https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>).

7.3.21

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Where it may be in the *customer's* interests to exercise their right to terminate a *hire purchase agreement* or *conditional sale agreement* under section 99 or section 100 of the *CCA*, a *firm* should make the *customer* aware of that right in good time, providing the information in a way that is clear, fair and not misleading to help the *customer* decide how to proceed.

7.3.22

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Where a *customer* intends to exercise their rights under section 99 or section 100 of the *CCA*, a *firm* should consider deferring legal liabilities associated with voluntary termination.

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 6.5.2 R**, 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 6.5.2 R** 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 7.5.5 R** 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 4.6.2 R; or
 - (b) the *firm* has complied in relation to such a request with ■ CONC 7.6.1R (2);
- (2) request a *payment service provider* to make a payment to recover default fees or other sums unless:
 - (a) (i) the amount (or the basis on which default fees or other sums may be taken) is specified in the *credit agreement* or *P2P agreement*; and

- (ii) the amount (or the basis on which default fees or other sums may be taken) was referred to in the adequate explanation required by ■ CONC 4.6.2 R; or
- (b) the *firm* has complied in relation to such a request with ■ CONC 7.6.1R (2);
- (3) other than where ■ CONC 7.6.14R (2) applies, request a *payment service provider* to make a payment from the *customer's* payment account of an amount that is less than the amount due at the time of the request, unless the *firm*:
 - (a) (i) is permitted to do so by the *credit agreement* or *P2P agreement*; and
 - (ii) the adequate explanation required by ■ CONC 4.6.2 R indicated that part payment (a sum due which is less than the full sum due at the time the *firm's* payment request is made) could be requested if the full amount was not available and specified the basis on which and the frequency with which such requests for payment could be made and any minimum amount or percentage that would be requested; or
- (b) the *firm* has complied in relation to such a request with ■ CONC 7.6.1R (2).
- (4) request a *payment service provider* to make a payment from the *customer's* payment account before the due date of payment as specified in the *credit agreement* or *P2P agreement*, unless the *firm* has complied with ■ CONC 7.6.1R (2);
- (5) request a *payment service provider* to make a payment from the *customer's* payment account after the due date on a date, or within a period, or with a frequency other than as specified in the *credit agreement* or *P2P agreement* and referred to in the adequate explanation, unless the *firm* has complied with ■ CONC 7.6.1R (2);
- (6) request a *payment service provider* to make a payment from the payment account of a third party other than as specifically agreed with the third party or agreed with the *customer* following the third party's confirmation to the *firm* that the third party consents to the arrangement.

[Note: paragraph 3.9mi of DCG]

7.6.2A

R

- (1) This *rule* applies where the terms of a *regulated credit agreement* or a *P2P agreement* do not provide for a *continuous payment authority* and it is proposed that a *customer* will grant a *continuous payment authority* to:
 - (a) a *lender* or a person who has *permission* to carry on the activity of *operating an electronic system in relation to lending*; or
 - (b) a *debt collector*, provided that the *debt collector* is acting under an arrangement with the *lender* or the person who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, the effect of which is that a payment by the *customer* to the *debt collector* amounts to a discharge or reduction of the debt due to the *lender*.

- (2) The *firm* which proposes the *continuous payment authority* to the *customer* must, before the *customer* grants the *continuous payment authority*:
 - (a) explain why a *continuous payment authority* is proposed;
 - (b) provide the *customer* with an adequate explanation of the matters in ■ CONC 4.6.2R(2);
 - (c) give the *customer* information, on paper or in another *durable medium*, setting out, in plain and intelligible language, the terms of the *continuous payment authority* and how it will operate; and
 - (d) give the *customer* a reasonable opportunity to consider the explanations required by (a) and (b) and the information required by (c).
- (3) A *firm* must not propose that a *customer* should grant a *continuous payment authority*, and must not exercise rights under such an authority, in respect of *repayments* under a *regulated credit agreement* or a *P2P agreement*, the terms of which do not already provide for a *continuous payment authority*, unless:
 - (a) the *customer* is in or approaching arrears or in default in respect of the agreement; and
 - (b) a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, or a *debt collector* acting under an arrangement with the *lender* or the *person*, is exercising forbearance in respect of the *customer* in relation to the agreement.

7.6.2B

G

- (1) Where a *regulated credit agreement* or a *P2P agreement* does not incorporate the terms of a *continuous payment authority*, ■ CONC 7.6.2AR enables a *continuous payment authority* to be put in place (for example, for a repayment plan) without necessarily requiring an amendment to the agreement. But ■ CONC 7.6.2AR applies only where the *customer* is in or approaching arrears or in default, and the creation of the *continuous payment authority* supports the fair treatment of the *customer* and facilitates the exercise of forbearance (see ■ CONC 7.3.4R and ■ CONC 7.3.5G).
- (2) ■ CONC 7.6.2AR also permits a *continuous payment authority* to be granted to a *debt collector*, provided that the *debt collector* is acting under an arrangement with a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, such that a payment to the *debt collector* is treated as a payment to the *lender*, and the requirements of ■ CONC 7.6.2AR(3) are met.
- (3) ■ CONC 7.6.2AR is subject to the *rule* in ■ CONC 7.6.12R which restricts *firms* to two requests under a *continuous payment authority* for a sum due for *high-cost short-term credit*.
- (4) Whether a forbearance that involves the creation of a *continuous payment authority* amounts to an agreement that varies or supplements a *regulated credit agreement* (rather than merely an indulgence to the *customer*) will depend on the circumstances. If there is an agreement that varies or supplements a *regulated credit*

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

- 7.6.3** R A *firm* must exercise its rights under a *continuous payment authority* in a manner which is reasonable, proportionate and not excessive and must exercise appropriate forbearance if it becomes aware that the *customer* is or may be experiencing financial difficulties.

[Note: paragraph 3.9mii of DCG]

- 7.6.4** G Whether exercising rights under a *continuous payment authority* is reasonable, proportionate and not excessive (as regards the frequency or period of collection attempts), will depend on the circumstances, including:

- (1) whether the *firm* is aware or has reason to believe that the *customer* is in actual or potential financial difficulties which the exercise of rights under a *continuous payment authority* may exacerbate; and
- (2) whether the *customer* has been notified of the failure to collect the payment and has responded to contact from the *firm*.

[Note: paragraph 3.9mii of DCG]

- 7.6.5** G A *firm* is likely to contravene ■ CONC 7.6.3 R if it:

- (1) requests a *payment service provider* to make a payment from the *customer's* payment account before income or other funds may reasonably be expected to reach the account; for example, this is likely to be relevant where a *firm* is aware of the *customer's* salary payment date; or
- (2) requests a *payment service provider* to make a payment from the *customer's* payment account where it has reason to believe that there are insufficient funds in the account or that taking the payment would leave insufficient funds for *priority debts* or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills or utility bills); or
- (3) requests a *payment service provider* to make a part payment (a sum due which less than the full sum due at the time the *firm's* payment request is made) of the sum due from the *customer's* payment account before it has made reasonable attempts to collect the full payment of the sum due on the due date; or
- (4) continues to exercise its rights under the *continuous payment authority* for an unreasonable period after the payment due date without taking steps to establish the reason for the payment failure.

[Note: paragraph 3.9mii of DCG]

- 7.6.6** G Where permissible, a *firm* should only make a reasonable number of payment requests to a *payment service provider* to collect a part payment (a sum due which is less than the full sum due at the time the *firm's* payment request is made) from the *customer's* payment account, having regard to the possibility that the *customer* may be in financial difficulties.
- [Note: paragraph 3.9mii (box) of DCG]
- 7.6.7** R A *firm* must not exercise its rights under a *continuous payment authority*:
- (1) if the *customer* provides reasonable evidence to the *firm* of being in financial difficulties and the *customer* cannot afford to repay the debt; or
 - (2) where the *firm* otherwise becomes aware of the *customer* being in financial difficulties and that the *customer* cannot afford to repay the debt.
- [Note: paragraph 3.9mii (box) of DCG]
- 7.6.8** G
- (1) If a *firm* becomes aware that a *customer* is in financial difficulties, the *firm* should reassess the payment arrangement and should consider reasonable proposals to revise the payment schedule and alternative repayment arrangements.
- [Note: paragraph 3.9mii (box) of DCG]
- (2) Where a *customer* informs a *firm* of being in financial difficulties, pending receipt of evidence to that effect, a *firm* should consider suspending exercise of its rights under a *continuous payment authority*.
- 7.6.9** G In the *FCA's* view, a *firm's* inability to recover the whole of the amount due by the end of the next *working day* after the date on which it was due would indicate that the *customer* may be experiencing financial difficulties. In such a case, a *firm* should suspend exercising its rights under the *continuous payment authority* until it has made reasonable efforts to contact the *customer* to establish the reason why payment was unsuccessful and whether the *customer* is in financial difficulties.
- [Note: paragraph 3.9mii (box) of DCG]
- 7.6.10** G If the *firm* and the *customer* have agreed an alternative payment date as a contingency option if payment is not available on the due date, the *firm* should suspend the exercise of its rights under the *continuous payment authority* after the due date, and again after the alternative payment date (if the *firm* is unable to recover the amount due at the end of that day) and make reasonable efforts (in accordance with ■ CONC 7.6.9 G) to contact the *customer* to establish the reason why payment was unsuccessful and whether the *customer* is in financial difficulties.
- [Note: paragraph 3.9mii (box) of DCG]

- 7.6.11** G If reasonable efforts to contact the *customer* are unsuccessful or a *customer* refuses to engage with the *firm* and there is no further evidence of financial difficulties, any subsequent exercise of its rights under the *continuous payment authority* should be reasonable and not excessive, having regard to the possibility that an unresponsive *customer* may nevertheless be in financial difficulties and that a *customer* who was not in financial difficulties at the time of contact may subsequently be in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

Continuous payment authorities and high-cost short-term credit

- 7.6.12** R
- (1) Subject to (3) to (5), a *firm* must not request a *payment service provider* to make a payment, under a *continuous payment authority*, to collect (in whole or in part) a sum due for *high-cost short-term credit* if it has done so in connection with the same agreement for *high-cost short-term credit* on two previous occasions and those previous payment requests have been refused.
 - (2) For the purposes of (1) and (3):
 - (a) if *high-cost short-term credit* has been refinanced, except in exercise of forbearance, the agreement is to be regarded as the same agreement; and
 - (b) "refinance" and "exercise forbearance" have the same meaning as in ■ CONC 6.7.17 R.
 - (3) Where a *firm* exercises forbearance:
 - (a) paragraph (1) applies or continues to apply to the agreement; but
 - (b) any refusal of a payment request that took place before the time at which the forbearance was granted is to be disregarded for the purposes of (1).
 - (4) Paragraph (5) applies following the refusal of two payment requests a *firm* has made to a *payment service provider* under a *continuous payment authority* to collect a sum due for *high-cost short-term credit*, where the *firm* proposes to refinance the *high-cost short term credit* in question in accordance with ■ CONC 6.7.17 R to ■ CONC 6.7.23 R.
 - (5) If the *firm* contacts the *customer* and, in the course of an dialogue between the *firm* and the *customer*:
 - (a) the *firm* notifies the *customer* of the refusal of the payment requests;
 - (b) the *firm* reminds the *customer* of the matters in ■ CONC 4.6.2R (2), taking account of any proposed changes to the terms of the *continuous payment authority* that will apply following the refinance if the *customer* consents; and
 - (c) the *customer* gives express consent to the *firm* further exercising its rights under the *continuous payment authority* following the refinance;

the *firm* may then make further payment requests under the *continuous payment authority* following the refinance in accordance with ■ CONC 7.6, and paragraph (1) applies as if the *firm* had not made a payment request under the *continuous payment authority* before the refinance.

- (6) This *rule* does not apply to an agreement which provides for repayment in instalments.

[**Note:** Until the end of 30 June 2014, transitional provisions apply to ■ CONC 7.6.12 R: see ■ CONC TP 3.4]

Continuous payment authorities and high-cost short-term credit: instalment payments

7.6.13

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 6.7.17 R the *firm* must not make a further payment request under the *continuous payment authority* to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:

- (a) a payment request is in accordance with ■ CONC 7.6;
- (b) the *firm* notifies the *customer* of the refusal of the payment requests; and
- (c) in the course of a dialogue between the *firm* and the *customer*, the *firm* reminds the *customer* of the date and amount of the next instalment and following which the *customer* gives express consent to further payment requests being made under the *continuous payment authority*.

7.6.14

R

- (4) If, where the prohibition in (1) applies, a *firm* adds no charge or additional interest in connection with missing a payment on the due date, the *firm* must not make a further payment request under the *continuous payment authority* to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:
- (a) a payment request is in accordance with ■ CONC 7.6;
 - (b) the *customer* has missed making a payment on the due date; and
 - (c) in the course of a dialogue between the *firm* and the *customer*, the *firm* reminds the *customer* of the date and amount of the next instalment and following which the *customer* gives express consent to further payment requests being made under the *continuous payment authority*.

[Note: Until the end of 30 June 2014, transitional provisions apply to ■ CONC 7.6.13 R: see ■ CONC TP 3.5]

- (1) Subject to (2), a *firm* must not request a *payment service provider* to make a payment under a *continuous payment authority* to collect a sum due for *high-cost short-term credit* if that sum is less than the full sum due at the time the request is made.

- (2) Where a *firm*:

- (a) following contact with a *customer*, refinances the agreement in accordance with ■ CONC 6.7.17 R to ■ CONC 6.7.23 R by granting an indulgence which allows for one or more *repayment* of a reduced amount under a repayment plan;
- (b) notifies the *customer* of the number and frequency of *repayments* and their amount under the repayment plan; and
- (c) the *customer* gives express consent to the *firm* to make payment requests to collect the *repayments* notified under the plan;

[Note: Until the end of 30 June 2014, transitional provisions apply to ■ CONC 7.6.14 R: see ■ CONC TP 3.6]

paragraph (1) does not prevent the *firm* from making a payment request in accordance with ■ CONC 7.6 under a *continuous payment authority* to collect *repayments* of those amounts in accordance with the plan.

7.6.15

G

- (1) ■ CONC 7.6.12 R, ■ CONC 7.6.13 R and ■ CONC 7.6.14 R do not prevent a *firm* accepting payment (including a part payment) from a *customer* using a means of payment other than under a *continuous payment authority*. If, for example, a *customer* consents separately that a single payment of a specified amount may be taken on the same day or on another specified day using his or her debit card details, this is excluded from the definition of *continuous payment authority*.
- (2) ■ CONC 7.6.14 R does not prevent a *firm* from making a payment request concerning a sum due where the *firm* has varied an agreement so that the sum due is less than it was before the variation.

7.6.15A

G

(3) *Firms* are reminded of their record-keeping obligations under ■ SYSC 9.1.1 R and ■ SYSC 9.1.1AR (general rules on record-keeping) which in particular require sufficient records to be kept to ascertain that the *firm* has complied with all obligations with respect to *customers*. These should include, for example, arranging to keep records of payment requests (including refusals of payment requests) made under *continuous payment authorities* and to keep suitable written or other records of the consents referred to in ■ CONC 7.6.1 R, ■ CONC 7.6.12 R, ■ CONC 7.6.13 R and ■ CONC 7.6.14 R.

- (1) Paragraph (2) applies where a guarantor has provided a guarantee or an indemnity (or both) in respect of *high-cost short-term credit*. (See ■ CONC 7.1.4R for the meanings of “guarantor” and “guarantee”.)
- (2) ■ CONC 7.6.12R and ■ CONC 7.6.13R apply to a *continuous payment authority* granted by the *borrower* and to a *continuous payment authority* granted by a guarantor separately. This means that the *firm* may make up to two requests for payment under a *continuous payment authority* granted by the borrower and, if those requests are unsuccessful, up to two requests for payment under a *continuous payment authority* granted by the guarantor.

Cancelling a continuous payment authority

7.6.16

R

A *firm* must not by any means improperly or unfairly inhibit or discourage a *customer* from cancelling a *continuous payment authority* including by:

- (1) misleading the *customer*, expressly or by omission, regarding the right to cancel and how it may be exercised; or
- (2) failing to respond promptly to requests by or on behalf of the *customer* to amend or cancel the *continuous payment authority*; or
- (3) intimidating a *customer* who wishes to cancel the *continuous payment authority*; or
- (4) requiring *customers* who wish to cancel the *continuous payment authority* to go through an unduly complicated process.

[Note: paragraph 3.9miv of DCG]

7.6.17

R

A *firm* must cease to exercise its rights under the *continuous payment authority* once it is notified that the *continuous payment authority* has been cancelled.

[Note: paragraph 3.9miv of DCG]

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]
- 7.7.6** **G** When considering whether any costs may be reasonable, a *firm* may have regard to the frequency and nature of the events to which the costs relate and whether they arise directly from the *customer* being in default or arrears difficulties.



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 7.8.1 R 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 7.9.2 R** 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 3.3.1 R** 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]

7.9.5A	G	<i>Firms</i> should note the effect of the <i>call charges rule</i> in ■ GEN 7.
Communication with third parties		
7.9.6	R	<p>A <i>firm</i> must not unfairly disclose or threaten to disclose information relating to the <i>customer's</i> debt to a third party.</p> <p>[Note: paragraph 3.7p of DCG]</p>
7.9.7	R	<p>When contacting a <i>customer</i>:</p> <ol style="list-style-type: none"> (1) a <i>firm</i> must ensure that it does not act in a way likely to be publicly embarrassing to the <i>customer</i>; and (2) a <i>firm</i> must take reasonable steps to ensure that third parties do not become aware that the <i>customer</i> is being pursued in respect of a debt <p>[Note: paragraph 3.7q of DCG].</p>
7.9.8	G	<p>The reasonable steps required by ■ CONC 7.9.7 R may, for example, require a <i>firm</i> to ensure that:</p> <ol style="list-style-type: none"> (1) post sent by the <i>firm</i> is properly addressed to the <i>customer</i> and marked "private and confidential" or an expression to the same effect; (2) where the <i>firm</i> has a name which indicates its debt collection activities, its name is not shown so that third parties may see the name on the <i>firm's</i> communications.
7.9.9	G	■ CONC 7.9.7 R would not preclude a <i>firm</i> sending a statutory notice to a <i>customer's</i> last known address, where it takes reasonable steps including those referred to in ■ CONC 7.9.8 G.
7.9.10	R	<p>A <i>firm</i> must not disclose details of a debt to an <i>individual</i> without first establishing, by suitably appropriate means, that the <i>individual</i> is (or acts on behalf of) the <i>borrower</i> or <i>hirer</i> under the relevant agreement).</p> <p>[Note: paragraph 3.9b of DCG]</p>
7.9.11	G	<p>A <i>firm</i> which:</p> <ol style="list-style-type: none"> (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 <i>customer</i>; <p>is likely to contravene ■ CONC 7.9.10 R.</p> <p>[Note: paragraphs 3.9a (box) and 3.9b (box) of DCG]</p>

Debt collection visits

7.9.12

R

Unless it is not practicable to do so, 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 explain the purpose and intended outcome of a proposed initial visit to the *customer* or to give adequate notice prior to a proposed initial visit to the *customer* may not contravene **CONC 7.9.12 R**, provided that 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* place of work or at a hospital where the *customer* is a patient.