

## Chapter 5D

# Overdraft repeat use



5D.1 Purpose and application

Purpose

5D.1.1 R

- (1) In this chapter, “repeat use” refers to a pattern of overdraft use where the frequency and depth of use may result in high cumulative charges that are harmful to the *customer* or indicate that the *customer* is experiencing or at risk of financial difficulties.
- (2) The expressions “arranged overdraft”, “excluded account”, “personal current account”, “private bank” and “unarranged overdraft” have the same meaning as set out at ■ CONC 5C.
- (3) Relevant information held by the *firm* includes:
  - (a) information from the *customer’s* personal current account; and
  - (b) information provided by the *customer*.
- (4) In (3)(a):
  - (a) the personal current account is the personal current account in respect of which the overdraft is provided;
  - (b) information from the *customer’s* personal current account may include, but is not limited to:
    - (i) a significant reduction in income into the account;
    - (ii) new periodic payments being set up to repay new borrowing commitments, where the level of payments may suggest that the *customer* is at risk of financial hardship.

5D.1.1A G

A *customer* is likely to experience financial hardship if they are unable to pay *priority debts* or essential living expenses.

5D.1.2 G

The purpose of this chapter is to require *firms* to:

- (1) monitor *customers’* patterns of overdraft use;
- (2) identify *customers* with patterns of repeat use; and
- (3) take appropriate steps with the aim of changing such patterns of use.

Who and what?

5D.1.3 R

- (1) Subject to (2), this chapter applies to a *firm* with respect to *consumer credit lending* and connected activities in relation to arranged

overdrafts and unarranged overdrafts associated with personal current accounts.

- (2) This chapter does not apply to:
  - (a) a *firm* if all personal current accounts provided or offered by the *firm* are excluded accounts;
  - (b) a *firm* in respect of any personal current account which may be used for a currency other than a currency of the *United Kingdom*;
  - (c) a private bank; or
  - (d) a *credit union*.
- (3) To the extent that a *rule* in this chapter does not already apply to *TP firms* as a result of ■ GEN 2.2.26R, it applies to them so far as the *rule* would have applied were it in effect before *IP completion day*.
- (4) To the extent that a *rule* in this chapter does not already apply to *Gibraltar-based firms* as a result of ■ GEN 2.3.1R, it applies to them so far as the *rule* would have applied were it in effect before *IP completion day*.

Where?

5D.1.4

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

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

- 5D.2.1** **R** A *firm* must establish, implement and maintain clear and effective policies, procedures and systems to:
- (1) monitor and review periodically the pattern of drawings and repayments of each of its *customers* under an arranged overdraft or an unarranged overdraft, and other relevant information held by the *firm*; and
  - (2) identify as early as possible, by reference to an appropriate collection of factors that take account of any relevant information held by the *firm*, any *customers* in respect of whom there is a pattern of repeat use, and then sub-divide those *customers* into the following two categories:
    - (a) *customers* in respect of whom there are signs of actual or potential financial difficulties;
    - (b) all other *customers* who show a pattern of repeat use (that is, all *customers* within ■ CONC 5D.2.1R(2) who are not in category (a)).
- 5D.2.2** **R** The rules in ■ CONC 5D.2.1R(1) and (2) do not apply where the *firm* is already in the process of intervening in respect of the *customer's* overdraft use in accordance with ■ CONC 5D.3.
- 5D.2.3** **G**
- (1) The policies, procedures and systems referred to in ■ CONC 5D.2.1R should, having regard to the nature, scale and complexity of the *firms' consumer credit lending* activity in relation to overdrafts, enable the *firm*, at regular intervals, to pro-actively look back over an appropriate period at patterns of overdraft use.
  - (2) A *firm* may decide the frequency with which it reviews previous overdraft use, and the length of the preceding period of overdraft use that it considers when doing so, provided that the *firm* can demonstrate that its policies, procedures and systems are effective in promptly identifying *customers* who are within ■ CONC 5D.2.1R(2)(a) or (b).
  - (3) ■ CONC 5D.2.1R does not specify the frequency, duration or amount of drawings that may constitute repeat use. *Firms* have discretion, therefore, to tailor the policies, procedures and systems required by ■ CONC 5D.2.1R to their specific business circumstances. If a *customer* has become or remained overdrawn in every *month* over the preceding 12-month period, it is likely that the *customer* will be

within ■ CONC 5D.2.1R(2)(a) or (b). It is also likely, however, that there will be other patterns of drawings in fewer numbers of *months* that are caught by ■ CONC 5D.2.1R(2)(a) or (b). There need not necessarily be drawings under an overdraft in consecutive *months* in order for use to be properly treated as repeat use. Conversely, there may be small and temporary drawings, even in consecutive *months*, that are neither indicative of actual or potential financial difficulties nor the cause of high cumulative charges.

- (4) When determining whether there is a high cumulative charge for overdraft use which may be harmful, the *firm* should consider the total amount of the combined charges both in absolute terms and relative to the *customer's* financial circumstances, where known.
- (5) Where there is a pattern of repeat use of an overdraft associated with a personal current account, features of that use and other factors which may be a sign of actual or potential financial difficulties include:
  - (a) one or more of the matters set out in ■ CONC 1.3.1G(1) to (7) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
  - (b) an upward trend in a *customer's* use of the overdraft over time, having regard to one or both of the following:
    - (i) the number of *days* of use per *month*; and
    - (ii) the value of the *customer's* borrowing.
  - (c) changes to the regular credits or debits to the personal current account, which may indicate a fall in disposable income or increased expenditure;
  - (d) use of other products which may indicate a fall in disposable income or growing indebtedness (for example, a reduction in the balance of a savings account, or an increase in the outstanding balance on another *credit* product) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
  - (e) the use of an unarranged overdraft associated with the personal current account, especially if becoming larger, more sustained or more frequent over time;
  - (f) the incidence of refused payments in relation to the personal current account, especially if there is a rise in the number or frequency of refused payments over time;
  - (g) information provided by the *customer* that indicates the *customer* is in, or is likely to experience, financial difficulties.
- (6) A *customer* may in fact be in actual or potential financial difficulties even if none of the factors described above is present, so the *customer's* response to the *firm's* initial intervention will be important for determining the appropriate next steps.
- (7) When a *firm* is first implementing policies, procedures and systems to identify *customers* in respect of whom there is a pattern of repeat use, the *firm* should give priority to identifying those *customers* who are vulnerable and experiencing, or at risk of, financial difficulties, in circumstances where prioritisation is appropriate in the light of the

scale and complexity of the *firm’s consumer credit lending activity* in relation to overdrafts.

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

### 5D.3.1

**R**

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

### 5D.3.2

**R**

- (1) This *rule* applies where a *firm* identifies that a *customer*:
  - (a) has a pattern of repeat use within the meaning of ■ CONC 5D.2.1R(2)(a); and
  - (b) is one in respect of whom there are signs of actual or potential financial difficulties.
- (2) The *firm* must promptly communicate with the *customer* in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the

*firm* and the *customer*) highlighting the *customer's* pattern of overdraft use and indicating that the *customer* should consider whether it is resulting or may result in high avoidable costs. The *firm* must encourage the *customer* to contact the *firm* to discuss their situation and explain that doing nothing could make things worse.

- (3) If after a reasonable period the *customer* has not contacted the *firm* and the *customer's* pattern of use continues to be within ■ CONC 5D.3.2R(1), the *firm* must take reasonable steps to contact the *customer* to discuss their situation.
- (4) In discussions under (2) or (3) (which need not be on a single occasion), the *firm* must seek to explore the reasons for the *customer's* pattern of overdraft use, as well as the reasons for the *customer's* actual or potential financial difficulties, and what (if anything) the *customer* is doing, or intends to do, to address those issues.
- (5) The *firm* must:
  - (a) promptly identify and set out suitable options, in light of all relevant information held by the *firm* (including the information gathered under (4)), designed to:
    - (i) help the *customer* to reduce their overdraft use over a reasonable period of time; and
    - (ii) provide the support required to address their actual or potential financial difficulties,
 in such a way that does not adversely affect the *customer's* financial situation; and
  - (b) explain to the *customer* that, if the *customer* fails to engage in the discussion or fails to take appropriate action to address the situation, one of the possible consequences is that the *firm* may need to consider the suspension or removal of the overdraft facility or a reduction in the credit limit.
- (6) If the *customer* declines to contact the *firm* in response to the communication in (2) and to respond to attempts by the *firm* to contact them under (3), or to take reasonable steps to take forward an appropriate option under (5) or to otherwise address the situation, the *firm* must after a reasonable period consider whether to continue to offer the overdraft facility and whether to reduce the credit limit.
- (7) Sub-paragraphs (5)(b) and (6) do not apply if the suspension or removal of the overdraft facility or a reduction in the credit limit would cause financial hardship to the *customer*.

## 5D.3.3



- (1) The purpose of ■ CONC 5D.3 is to require a *firm* to intervene in an appropriate and proportionate manner where it detects repeat use of an overdraft with the aim of reducing that use and improving the *customer's* financial situation. A *firm* should keep in mind, when doing so, the principle that an overdraft is not generally suitable for long-term use that results in a high total cost burden, as well as the need to pay due regard to the interests of its *customers* and treat them fairly in accordance with *Principle 6*.



When a *firm* identifies that ■ CONC 5D.3.2R(1)(a) and ■ (b) apply to a *customer*, it should:

- (a) promptly take the action specified in ■ CONC 7.3.7AG(1)(a) to ■ (b) (provision of information to the *customer*); and
  - (b) where appropriate to the *customer's* circumstances, follow the guidance set out in ■ CONC 7.3.7AG(2) to ■ (6) (further communication with the *customer*).
- (2) ■ CONC 5D.3 does not specify a particular form of words to be used in communications with repeat overdraft users, and *firms* have discretion to tailor the language and tone of those communications to the circumstances of the individual *customer*.
- (3) For the purposes of ■ CONC 5D.3.2R(3), "reasonable period" is unlikely to be longer than one *month*.
- (4) Options that a *firm* could identify for the purposes of ■ CONC 5D.3.2R(5)(a) may include, where assessed as appropriate for the *customer*:
- (a) advice on budgeting and money management, for example adjusting payment dates or setting up alerts;
  - (b) [deleted]
  - (c) [deleted]
  - (d) forbearance and other support, including doing one or more of the following:
    - (i) reducing or waiving interest and other charges or (where applicable) allowing additional time to pay, where this does not unduly delay further help to the *customer*, or permit further deterioration of the *customer's* financial position;
    - (ii) transferring the overdraft debt to an alternative *credit agreement* on more favourable terms (refinancing), provided that this would not cause financial hardship to the *customer*; or
    - (iii) agreeing staged reductions in the overdraft limit and balance (agreeing a repayment plan).
  - (e) a reduction in the credit limit or the suspension or removal of the overdraft facility (or reminding the *customer* that they can ask the *firm* to take these steps) provided that such reduction, suspension or removal would not cause financial hardship to the *customer*.
- (5) (a) If an overdraft *customer* has already been identified by a *firm* as being in financial difficulties, and is already being treated with appropriate forbearance by the *firm*, the *rules* in this section do not require the *firm* to do anything which is inconsistent with the treatment that it has already adopted in respect of that *customer*.
- (b) Where a *Debt Respite moratorium* is in effect for a *customer's* overdraft and a *firm* is complying with its obligations pursuant to that moratorium, the *firm* is treating the *customer* with appropriate forbearance with respect to the portion of the overdraft that is subject to the moratorium. The *firm* is not required to take the steps in relation to that *moratorium debt*

under this section during the moratorium, as these steps would be inconsistent with the treatment currently being adopted in respect of that *customer*.

(6) *Firms* are reminded that they should not consider the suspension or removal of the overdraft facility, or a reduction in the credit limit, under ■ CONC 5D.3.2R(6) if this would cause financial hardship to a *customer* (■ CONC 5D.3.2R(7)). A *firm* should give careful thought to the potential effect of suspension, removal or reduction on the *customer* and consider these steps as part of a response to repeat use only where the *firm* is confident, on the basis of sufficient information and enquiry, that they would not cause financial hardship in the individual circumstances of the case.

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|---------|----------|--|
| 5D.3.4  | <b>R</b> | Where a <i>firm</i> identifies a forbearance or other support option under ■ CONC 5D.3.3G(4)(d), the <i>firm</i> must take all reasonable steps to ensure that any measure agreed with the <i>customer</i> is sustainable.   |
| 5D.3.5  | <b>G</b> | <p>(1) A measure 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.</p> <p>(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.</p>  |
| 5D.3.6  | <b>R</b> | A <i>firm</i> must take reasonable steps to ensure that any measure remains appropriate.   |
| 5D.3.7  | <b>G</b> | What is reasonable in any given case will depend on the <i>customer's</i> circumstances and the nature of the measure provided, but may include reviewing the terms of the measure 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. |
| 5D.3.8  | <b>R</b> | Where a <i>firm</i> assesses income and expenditure, it must do so in an objective manner.   |
| 5D.3.9  | <b>G</b> | <p>When complying with ■ CONC 5D.3.8R:</p> <p>(1) the assessment should be informed by sufficiently detailed information; and</p> <p>(2) a <i>firm</i> may have regard to the spending guidelines in the Standard Financial Statement or an equivalent tool.</p>   |
| 5D.3.10 | <b>G</b> | A <i>firm</i> should have clear written policies setting out how and in what circumstances it conducts income and expenditure assessments.   |

**Information provided to customers**

5D.3.11

**G**When a *firm* identifies that ■ CONC 5D.3.2R(1)(a) and ■ (b) apply to a customer:

- (1) when engaging with *customers*, *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* 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; andis 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.

5D



5D.4 Monitoring repeat use strategies

- 5D.4.1

**R**

A *firm* must monitor and periodically review the effectiveness of its policies, procedures and systems under ■ CONC 5D.2.1R, and update or adjust them as appropriate.
- 5D.4.2

**G**

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

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

### 5D.5.1

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- (1) A *firm* must submit a document to the *FCA* by electronic mail to [overdrafts@fca.org.uk](mailto:overdrafts@fca.org.uk), containing a detailed description of the policies, procedures and systems it establishes to comply with:
  - (a) ■ CONC 5D.2.1R;
  - (b) ■ CONC 5D.3.2R; and
  - (c) ■ CONC 5D.4.1Rno later than the date on which the *firm* becomes subject to ■ CONC 5D.
- (2) A *firm* must prepare two reports for the *FCA* describing the results of the monitoring required by ■ CONC 5D.4.1R. The first report must be in respect of the *six-month* reporting period beginning on the date on which the *firm* becomes subject to ■ CONC 5D. The second report must be in respect of the *six-month* reporting period that begins immediately after the end of the reporting period covered by the first report. Each report must be submitted to the *FCA* by electronic mail to [overdrafts@fca.org.uk](mailto:overdrafts@fca.org.uk) within one *month* following the end of the relevant *six-month* reporting period and must include the following information:
  - (a) the number of repeat users and total size of their overdraft balances at the start of the reporting period;
  - (b) the number of repeat users and total size of their overdraft balances at the end of the reporting period; and
  - (c) any explanation, commentary or background on the figures in (a) and (b).
- (3) Where a *firm* proposes to update its policies, procedures and systems, it must submit a report to the *FCA* containing a description of any substantial changes.

