

## Chapter 2

# Conduct of business standards: general



2.1 Application

2.1.1

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This chapter applies as stated in the sections which follow.

## 2.2 General principles for credit-related regulated activities

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

### General principles

**2.2.2** **G** *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. Examples of behaviour by or on behalf of a *firm* which is likely to contravene *Principle 6* include:

- (1) targeting *customers* with *regulated credit agreements* which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason;
- (2) subjecting *customers* to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion;
- (3) not allowing *customers* who are unable to make payments a reasonable time and opportunity to meet *repayments*;
- (4) taking steps to repossess a *customer's* home, other than as a last resort.

[Note: paragraph 7.14 of *ILG*]

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

### Duty not to use misleading names

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

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

**2.2.4** **G**

- (1) In relation to **CONC 2.2.3 R**, an example of where a name may mislead is if the average *customer* of the *firm* is likely to be misled by the name of the *firm*.
- (2) Examples of the matters concerning a *firm's* status or the nature of its business about which its name may mislead *customers* include:
  - (a) the identity or nature of the *firm*;

- (b) its commercial or profit-seeking status;
- (c) its role, including any relationship with any other *person*;
- (d) the extent of its authority;
- (e) stating or implying that the *firm* is a public body or that it is related or connected in some way to a charitable, not-for-profit or governmental or local governmental organisation or to the courts;
- (f) the nature of the products or services supplied;
- (g) the cost of those products or services; and
- (h) the scale of the business including its geographical scope.

- (3) A *firm* which operates under a variety of trading names should take particular care to ensure that *customers* are not misled as to the identity of the *firm*, or the nature or scale of the *firm's* business.

#### Effect on other rules and legislation

2.2.5

**R**

Any specific rule or piece of guidance in *CONC* is without prejudice to the application of *PRIN*, any other *rules* in the *Handbooks*, the *CCA* and secondary legislation made and things done under it, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Rights Act 2015, Part 8 of the Enterprise Act 2002 and any other applicable consumer protection legislation.

#### Restriction on marketing or providing an optional product for which a fee is payable

2.2.6

**R**

- (1) A *firm* must not enter into an agreement with a *customer* under which a charge is, or may become, payable for an optional additional product unless the *customer* has actively elected to obtain that specific product.
- (2) A *firm* must not impose a charge on a *customer* for an optional additional product under an agreement entered into on or after 1 April 2016 unless the *customer* actively elected to obtain that specific product before becoming bound to pay the charge.
- (3) A *firm* must not invite or induce a *customer* to obtain an optional additional product for which a charge will be, or may become, payable if the *firm* knows or has reasonable cause to suspect that:
  - (a) a contravention of (1) or (2) will take place with respect to the product; or
  - (b) the *person* supplying the optional additional product will act in a way that would contravene (1) or (2) if that *person* were a *firm*.
- (4) An omission by a *customer* is not to be regarded as an active election for the purposes of this *rule*.
- (5) It is immaterial for the purposes of (3) whether or not the *firm* would or might be a party to the agreement for the optional additional product.

- (6) A charge includes a financial consideration of any kind whether payable to the *firm* or any other *person*.
- (7) An optional additional product is a good, service or right of any description (whether or not financial in nature) that a *customer* may obtain (or not, as the case may be) at his or her election in connection with or alongside a service the provision of which constitutes the carrying on of a *credit-related regulated activity*.
- (8) (a) Where a *customer* is required to obtain a specific additional product, in order to receive the service the provision of which constitutes the carrying on of the *credit-related regulated activity*, the product is not an optional additional product.  
(b) Where a *customer* is required to obtain a particular category of additional product (for example, a particular type of insurance), in order to receive the service the provision of which constitutes the carrying on of the *credit-related regulated activity*, and the *customer* is given a choice as to the seller or supplier from whom to obtain the product or which specific product to obtain, the product is an optional additional product.
- (9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the *firm* or another *person*.
- (10) A *borrower-lender agreement* enabling a *borrower* to overdraw on a current account, or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit, is not an optional additional product.
- (11) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the *customer* actively elected before entering into the initial agreement or a preceding renewal to obtain the product.  
(b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).  
(c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.
- (12) A *customer* may make an active election for the purposes of this rule through an intermediary in the sales process or through a *person* acting on behalf of the *firm*.

**2.2.7**



An example of an omission by a *customer* which is not to be regarded as an active election is the failure by the *customer* to change a default option such as a pre-ticked box on a website.

- 2.2.8

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Firms are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.
- 2.2.9

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Firms are reminded of the guidance on appointed representatives set out in ■ CONC 1.2.3G.

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

### Application

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

### General conduct

- 2.3.2 **R** A *firm* must explain the key features of a *regulated credit agreement* to enable the *customer* to make an informed choice as required by **CONC 4.2.5 R** (adequate explanations).

[Note: paragraph 2.2 of *ILG*]

- 2.3.3 **G** **CONC 6.7.2 R** requires a *firm* to monitor a *customer's* repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

- 2.3.4 **R** A *firm* must take reasonable steps to satisfy itself that any *credit brokers* with whom the *firm* deals are *authorised persons* or *appointed representatives*.

[Note: paragraph 1.27 of *CBG*]

### Provision of credit card cheques

- 2.3.5 **R** (1) A *firm* may provide *credit card cheques* only to a *customer* who has asked for them.

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

- (2) A *firm* may provide *credit card cheques* only on a single occasion in respect of each request that is made.

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

- (3) The number of *credit card cheques* provided in respect of a request must not exceed three (or, if less, the number requested).

[Note: section 51A(4) of *CCA*]

- (4) Where a single request is made for the provision of *credit card cheques* in connection with more than one *credit-token agreement*,

(2) and (3) apply as if a separate request had been made for each agreement.

[Note: section 51A(5) of CCA]

- (5) Where more than one request for the provision of *credit card cheques* is made in the same document or at the same time:
- (a) they may be provided in respect of only one of the requests, but
  - (b) if the requests relate to more than one *credit-token agreement*, in relation to each agreement they may be provided only in respect of one of the requests made in relation to that agreement.

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

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

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

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

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

- (8) The declaration in (7) must be in the form and content set out in ■ CONC App 1 for the exemption relating to business.
- (9) Paragraph (7) does not apply if, when the agreement is entered into
- (a) the *lender*; or
  - (b) any *person* who has acted on behalf of the *lender* in connection with the entering into of the agreement;

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

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

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

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



## 2.4 Credit references: conduct of business: lenders and owners

### Application

2.4.1

**R**

This section applies:

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

### Disclosure of name and address of credit reference agencies consulted

2.4.2

**R**

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

[Note: regulation 2 of SI 1977/330]

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

[Note: regulation 2 of SI 1977/330]

### Searching credit files

2.4.3

**G**

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

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

2.5 Conduct of business: credit broking

Conduct of business: credit broking

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

Conduct of business

- 2.5.3 R A *firm* must:
- (1) where it has responsibility for doing so, explain the key features of a *regulated credit agreement* to enable the *customer* to make an informed choice as required by ■ CONC 4.2.5 R;

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

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

[Note: paragraph 4.22 of *CBG*]

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

[Note: paragraph 3.9I of *CBG*]

(4) before referring the *customer* to a third party which carries on *regulated activities* or to a claims management service (within the meaning of section 419A of the Act) or other services, obtain the *customer's* consent, after having explained why the *customer's* details are to be disclosed to that third party;

[Note: paragraph 3.9r of *CBG*]

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

[Note: paragraph 3.9y of CBG]

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

[Note: paragraph 3.9q of CBG]

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

[Note: paragraph 3.9u of CBG]

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

[Note: paragraph 3.9w of CBG]

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

[Note: paragraph 3.9x of CBG]

#### 2.5.4

G

A *firm* may comply with ■ CONC 2.5.3R (6) by presenting to the *customer* a privacy notice. The Information Commissioner's Office has prepared the Privacy Notices Code of Practice.

### Conduct of business: credit references

#### 2.5.5

R

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

[Note: regulation 3 of SI 1977/ 330]

#### 2.5.6

R

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

- (1) the name and address of any *credit reference agency* from which B has during those negotiations applied for information about the financial standing of the *customer*; and

- (2) the name and address of any *credit reference agency* of which B has been informed under ■ CONC 2.4.2 R.

[Note: regulation 4 of SI 1977/ 330]

### Searching credit files

2.5.7

G

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

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

### Unfair business practices: credit brokers

2.5.8

R

A *firm* must not:

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

[Note: paragraph 3.9a of CBG]

- (2) other than where:

(a) [deleted]

(b) [deleted]

(c) [deleted]

- (ca) (i) the *firm* has obtained the contact details of a *customer* (C) in the course of the sale or negotiations for the sale of a product or service to C;

(ii) the direct marketing is in respect of the *firm's* similar products and services only; and

(iii) C has been given a simple means of refusing (free of charge, except for the cost of the transmission of the refusal) the use of the contact details for the purposes of such direct marketing, at the time that the details were initially collected and, where C did not initially refuse the use of the details, at the time of each subsequent communication; or

- (d) the *firm* has previously explained that the following calls or *electronic communications* would be sent or made or caused to be sent or made by the *firm* and following that explanation C consented for the time being to such calls or communications;

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

all of the destinations so called) a call to C, for the purposes of marketing;

[Note paragraph 3.9b of CBG]

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

[Note: paragraph 3.9c of CBG]

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

[Note: paragraph 3.9c of CBG]

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

[Note: paragraph 3.9f of CBG]

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

[Note: paragraph 3.9g of CBG]

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

[Note: paragraph 3.9h of CBG]

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

[Note: paragraph 3.9i of CBG]

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

[Note: paragraph 3.9j of CBG]

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

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

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

[Note: paragraph 4.26d of CBG]

- (12) secure more *credit* for a *customer* than was requested where the object of doing so is for, or can reasonably be concluded as having

been for, the personal gain of the *firm* or of a *person* acting on its behalf, rather than in the best interests of the *customer*;

[Note: paragraph 4.26e of CBG]

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

[Note: paragraph 4.26e of CBG]

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

[Note: paragraph 4.41k of CBG]

- (14) in relation to an insurance product or service (including, in particular, a payment protection product (the meaning of which is set out in ■ CONC 2.5.10 R)) or other product or service linked to the *credit agreement* or *consumer hire agreement* (whether the product or service is optional or required as a condition of the *credit agreement* or *consumer hire agreement*):

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

[Note: paragraph 2.62, 2nd bullet of JGPP1]

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

[Note: paragraph 2.62, 2nd bullet of JGPP1]

- (c) discourage or prevent the *customer* from seeking or obtaining the product or service from another source;

[Note: paragraph 4.26f of CBG]

- (15) [deleted]

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

[Note: paragraph 4.26g of CBG]

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

[Note: paragraph 4.26h of CBG]

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

[Note: paragraph 4.41h of CBG]

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

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

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

[Note: paragraph 4.17f of CBG]

- (20) take a fee from a *customer's* payment account without the *customer's* express authorisation to do so (and "payment account" in this *rule* has the same meaning as in the *Payment Services Regulations*, being an account held in the name of one or more payment service users which is used for the execution of payment transactions);

[Note: paragraph 4.17c of CBG]

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

[Note: paragraph 3.9s of CBG]

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

[Note: paragraph 3.9t of CBG]

### Guidance on unfair business practices

#### 2.5.9

G

- (1) It is likely to be an inappropriate offer of an inducement or incentive to enter into an *regulated credit agreement* or a *regulated consumer hire agreement* to state that the offer in relation to the agreement will be withdrawn or the terms and conditions of the offer will worsen if the agreement is not signed immediately or within a stated period after the communication, unless the *firm's* offer on those terms and conditions will in fact be withdrawn or worsen in the period indicated to the *customer*.

[Note: paragraph 3.9j (box) of CBG]

- (2) An example of unfairly requesting, suggesting or directing a *customer* to a premium rate telephone number is likely to be to do so in relation to a *customer* wishing to complain about the *firm's* service or to request a refund, including, for example, under section 155 of the CCA.



[Note: paragraph 6.19f of CBG]

- (3) It is unlikely to be reasonable for it to be necessary for a *customer* to make more than one telephone call exceeding 15 minutes to a *firm* to apply for *credit*. Where a longer call is required, the *firm* should ensure the call is not made on a premium rate telephone number.

[Note: paragraph 3.9i (box) of CBG]

- (4) It is unlikely to be reasonable to request, suggest or direct a *customer* to call the *firm* repeatedly to check on the status of an application. A call to check on the status of an application should not last more than five minutes.

[Note: paragraph 3.9i (box) of CBG]

- (5) A *firm* should disclose to a *customer* the amount, or likely amount, of any fee payable for its services as early as practicable in the *firm's* dealings with the *customer*. ■ CONC 4.4.2 R requires a *credit broker* to disclose any such fee agreed with the *customer* in writing or in another *durable medium*.

[Note: paragraphs 2.2, 7th bullet, 3.7l and 4.9 of CBG]

- (6) Where a *firm* makes an introduction of the type referred to in ■ CONC 2.5.8R (19) the *firm* should ensure that the *customer's* consent is preceded by a full explanation of the key features and key risks of the product to which the introduction applies.

[Note: paragraph 4.17f of CBG]

- (7) A *customer's* personal data must be processed fairly and lawfully and only for specified purposes. While it may be possible to pass special categories of personal data in specified and limited circumstances to certain third parties without the *customer's* consent where a condition of *data protection legislation* applies, a *firm* (other than where it is under a statutory obligation to pass personal data to a third party) should generally seek the *customer's* consent before passing such personal data to a third party.

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

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

*Firms* should note the effect of the *call charges rule* in ■ GEN 7.

#### 2.5.10

**R**

In ■ CONC 2.5.8R (14):

- (1) payment protection product means a product or feature of a product designed to offer *customers* short-term protection against potential loss of income, by providing the means for them to meet (or temporarily suspend) their financial obligations including *repayments* under a *credit agreement*. Payment protection products include, in particular, short term income protection, debt freeze or debt waiver;



- (2) short-term income protection means a contract of insurance which provides a pre-agreed amount paid directly to the policyholder or the policyholder's nominee in the event that the policyholder experiences involuntary unemployment or incapacity as a result of accident or sickness and may be combined with other forms of insurance cover or include other benefits and which:
  - (a) has a maximum time-limited benefit duration;
  - (b) is written for a term which is less than 5 years and not predetermined by the term of any *credit agreement*; and
  - (c) can be terminated by the *insurer*.

**2.5.11**

**G**

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

## 2.5A Conduct of business: high-cost short-term credit (HCSTC) products on price comparison websites

### Application

2.5A.1

**R**

This section applies to a *firm* which owns or operates a website that displays any terms on which *high-cost short-term credit* products are available from different *lenders* (referred to in this section as a “price comparison website”) and in relation to which it:

- (1) holds itself out as providing a price comparison service or a price service; or
- (2) describes itself in any way as a price comparison website or a price website; or
- (3) gives the impression in any way that the website is a price comparison website or a price website.

### Listing details of high-cost short-term loans not based on commercial interests or relationships

2.5A.2

**R**

Where a *firm* lists information on the website it owns or operates concerning *high-cost short-term credit* products in order to enable a *customer* to compare any terms of those products, it must display the information in a way that neither the ranking of products nor the prominence of display of products is based (wholly or partly) on the *firm's* commercial interests or its commercial relationship with any *person*.

### HCSTC price comparison website functionality

2.5A.3

**R**

A *firm* must ensure that the price comparison website enables:

- (1) a *customer* to enter the value and duration of the *customer's* desired loan when specifying the criteria for a search; and
- (2) a search to be made of the *high-cost short-term credit* products covered by the website and the results of the search to be displayed on the basis of only that information.

2.5A.4

**G**

- (1) A *firm's* obligations under **CONC 2.5A.3R(1)** and (2) may be satisfied by enabling a *customer* to select from a reasonable range of options

of values of loan or of durations of loan, when specifying the criteria for a search.

- (2) What is a reasonable range of options for a search will depend, for example, on the breadth of value of loans or on the duration of loans that appear on the price comparison website. For example, it may be reasonable depending on the circumstances to allow a choice of bands of values or durations.

**2.5A.5**

**R**

In response to a request to perform a search for a *high-cost-short-term credit* product, the *firm* must ensure that the price comparison website:

- (1) displays specific information relating to each loan covered by the website which corresponds to the search criteria entered by the *customer* as a separate result;
- (2) ranks those results in order of *total amount payable* in accordance with ■ CONC 3.5.5R(2), with the loan with the lowest *total amount payable* first and the highest last; and
- (3) where two or more search results have the same *total amount payable* in accordance with (2), ranks the results according to another criterion permissible under ■ CONC 2.5A.

**2.5A.6**

**R**

A *firm* must ensure that neither:

- (1) the ranking of the results of a search for a *high-cost-short-term credit* product, nor
- (2) the prominence of the display of the results of such a search, nor
- (3) whether a loan from a *lender* or *credit broker*, whose loans the *firm* arranges to compare or claims to compare, is displayed in the results of such a search,

is based (wholly or partly) on the *firm's* commercial interests or its commercial relationship with any *person*.

**2.5A.7**

**G**

- (1) The information displayed on the price comparison website (for example, information concerning a loan, the results of a search or claims about the market coverage of the website) will need to comply with the financial promotion *rules* in ■ CONC 3. In particular, it will need to comply with the requirement for a communication or a *financial promotion* to be clear, fair and not misleading. The results of a search also need to comply with the detailed *rules* in ■ CONC 3.5. In particular, the results will require a representative example. The relevant items of the representative example must be representative of what the *firm* reasonably expects, at the date on which the *financial promotion* is made, to be representative of *credit agreements* to which the *representative APR* applies and which are expected to be entered into as a result of the promotion.
- (2) The fact that a *lender* or *credit broker* pays a commission to the *firm* or pays for advertising or other marketing on the price comparison website (and the amount of any such commission or payment) should

not affect the ranking or prominence of display of the results of a search. Such payment should also not affect whether information about a loan from a *lender* or *credit broker* whose loans the *firm* arranges to compare or claims to compare appears in the results of a search.

- (3) ■ CONC 2.5A.6R does not require the *firm* to compare loans from a *lender* or *credit broker* where it has not arranged to do so with that *lender* or *credit broker* nor where it does not claim to compare loans from that *lender* or *credit broker*.
- (4) The *firm* should ensure that any information concerning a loan or any result of a search which relates to another *firm's credit broking* service states prominently that:
  - (a) the *firm* referred to is a *credit broker* and is not a *lender*; or
  - (b) if the *firm* referred to is both a *lender* and a *credit broker*, the *firm* referred to is promoting its services as a *credit broker* and not its services as a *lender*.
- (5) ■ CONC 2.5A.6R does not prevent the *firm*, once the initial results have been displayed in order of *total amount payable*, permitting a *customer* to re-sort the results of a search into a different order.

HCSTC price comparison website financial promotion

- 2.5A.8 ■ A *firm* must not display a *financial promotion*, other than the result of a search, in or between the results of a search.
- 2.5A.9 ■ A *firm* must ensure that the results of a search are clearly distinguishable from any other *financial promotion*.
- 2.5A.10 □ A result of a search may include a hyperlink to the website of the *lender* or *credit broker* in question.

HCSTC price comparison website market coverage

- 2.5A.11 ■ A *firm* must list in one place on the price comparison website the brand names of *lenders* whose *high-cost short-term credit* products are displayed on the website.

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

### **Application**

2.6.1

**R**

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

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

### **Conduct of business**

2.6.2

**R**

A *firm* must bring to the attention of a *customer* how the *firm* uses the *customer's* personal data it collects in a manner appropriate to the means of communication used.

[Note: paragraph 2.5e of *DMG*]

### **Unfair business practices**

2.6.3

**R**

A *firm* must not:

- (1) by any means, including during a visit to a *customer*, coerce or use pressure to sell its services;

[Note: paragraph 3.12o of *DMG*]

- (2) take advantage of a *customer's* lack of knowledge or understanding of the law relating to consumer credit or to insolvency or to otherwise dealing with debts in order to sell its services;

[Note: paragraph 3.12o of *DMG*]

- (3) in relation to a visit to a *customer*:

- (a) make an appointment to visit or visit at a time which is unreasonable or inconvenient from the *customer's* point of view, unless the *consumer* expressly consents;

[Note: paragraph 3.15a of *DMG*]

- (b) refuse to end the visit, refuse to leave the *customer's* home or ignore the *customer's* request not to return there;

[Note: paragraph 3.15b of *DMG*]

- (c) make a visit which is unreasonably or unnecessarily long;

[Note: paragraph 3.15c of *DMG*]

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

[Note: paragraph 3.18x of *DMG*]

#### Guidance on unfair business practices

2.6.4

G

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

[Note: paragraph 3.13 of *DMG*]

- (2) Where a long telephone call is required, the *firm* should ensure the call is not made on a premium rate number.
- (3) It is unlikely to be reasonable for it to be necessary for a *customer* to make a call exceeding one hour to a *firm* in relation to *debt counselling or debt adjusting*. Where a call longer than 15 minutes is required for the *firm* to provide its service to the *customer*, the *firm* should ensure the call is not made on a premium rate phone number.
- (4) It is unlikely to be reasonable for a call by the *customer* to check on the status of the *customer's* case to last more than five minutes.
- (5) *Firms* should note the effect of the *call charges rule* in ■ GEN 7.

## 2.7 Distance marketing

2

### Application

2.7.1

**R**

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

### The distance marketing disclosure rules

2.7.2

**R**

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

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

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

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

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

- (4) Paragraph (1) and the requirement to provide the abbreviated distance marketing information (■ CONC 2 Annex 2) in ■ CONC 2.7.11 R do not apply to a *distance contract* which is also an *authorised non-business overdraft agreement* in respect of which:

- (a) the *firm* has disclosed the information required by regulation 10(2) of the *disclosure regulations* (authorised non-business overdraft agreements) by means of the Pre-contract Consumer Credit Information (Overdrafts) form in accordance with the *disclosure regulations* and, unless ■ CONC 2.7.12 R would otherwise apply, a copy of the contractual terms and conditions;
- (b) in the case of a voice telephony communication, the *firm* has:
  - (i) disclosed the information required by regulation 10(5) of the *disclosure regulations* in accordance with the *disclosure regulations*; and
  - (ii) provided a copy of the written agreement in accordance with section 61B(2)(b) of the CCA; or
- (c) in the case of an agreement made using a means of distance communication, other than voice telephony communication, where a *firm* is unable to provide the information required by regulation 10(2) of the *disclosure regulations*, the *firm* has:
  - (i) provided a copy of the written agreement in accordance with section 61B(2)(c) of the CCA, and
  - (ii) unless ■ CONC 2.7.12 R would otherwise apply, in relation to the prospective *distance contract*, provided information which accurately reflects the contractual obligations which would arise under the law presumed to be applicable to that contract.

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

2.7.3

R

A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent.

[Note: regulation 7(2) and (3) of SI 2004/2095]

[Note: article 3(2) of the *Distance Marketing Directive*]

2.7.4

R

When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purposes of its call explicitly clear at the beginning of the conversation.

[Note: regulation 7(4) of SI 2004/2095]

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

2.7.5

R

A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase accurately reflects the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: regulation 7(5) of SI 2004/2095]

[Note: article 3(4) of the *Distance Marketing Directive*]



### Terms and conditions, and form

2.7.6

**R**

A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* (■ CONC 2.7.2 R to ■ CONC 2.7.5 R) in a *durable medium*. That information must be made available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: regulation 8(1) of SI 2004/2095]

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

2.7.7

**G**

(1) Activities in relation to a *consumer hire agreement* are not financial services within the meaning of the *Distance Marketing Directive* and do not fall within ■ CONC 2.7. Instead such agreements fall within the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334) if they were made before 13 June 2014, or the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) if they were made on or after that date.

(2) A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

### Commencing performance of the distance contract

2.7.8

**R**

The performance of the *distance contract* may only begin after the *consumer* has given approval.

[Note: article 7(1) of the *Distance Marketing Directive*]

### Exception: successive operations

2.7.9

**R**

In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this chapter only apply to the initial agreement.

[Note: regulation 5(1) of SI 2004/2095]

[Note: article 1(2) of the *Distance Marketing Directive*]

2.7.10

**R**

(1) If there is no initial service agreement but the successive or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (■ CONC 2.7.2 R to ■ CONC 2.7.5 R) will only apply:

(a) when the first operation is performed; and

(b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[Note: regulation 5(2) of SI 2004/2095]

[Note: recital 16 and article 1(2) of the *Distance Marketing Directive*]

(2) In this section:

- (a) "initial service agreement" includes the opening of a bank account or the making of a *credit-token agreement*;
- (b) "operations" includes the deposit or withdrawal of funds to or from a bank account and payments by a credit card or a store card; and
- (c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing retail banking service, does not constitute an "operation" but an additional contract to which the *rules* in this chapter apply.

[Note: regulation 5 of SI 2004/2095]

[Note: recital 17 of the *Distance Marketing Directive*]

### Exception: voice telephony communications

2.7.11

**R**

In the case of voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (■ CONC 2 Annex 2R) needs to be provided during that communication. However, unless another exception applies (such as the exemption for means of distance communication not enabling disclosure), a *firm* must still provide the distance marketing information (■ CONC 2 Annex 1R) in a *durable medium* that is available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: regulation 7(4)(b) of SI 2004/2095]

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

### Exception: means of distance communication not enabling disclosure

2.7.12

**R**

A *firm* may provide the distance marketing information (■ CONC 2 Annex 1R) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: article 5(2) of the *Distance Marketing Directive*]

### Exception: contracts for payment services

2.7.13

**G**

Where a *distance contract* covers both *payment services* and non-payment services, the exception in ■ CONC 2.7.2R (2) applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 6 of the *Payment Services Regulations*.

- Consumer's right to request paper copies and change the means of communication**
- 2.7.14 **R** At any time during the contractual relationship, the *consumer* is entitled, at request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.
- [Note: regulation 8(2) and (4) of SI 2004/2095]
- [Note: article 5(3) of the *Distance Marketing Directive*]
- Unsolicited services**
- 2.7.15 **R** (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer* in the event of an unsolicited supply of services. The absence of a reply does not constitute consent.
- (2) This *rule* does not apply to the tacit renewal of a *distance contract*.
- [Note: regulation 15 of SI 2004/2095]
- [Note: article 9 of the *Distance Marketing Directive*]
- Mandatory nature of consumer's right**
- 2.7.16 **R** If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.
- [Note: article 12 of the *Distance Marketing Directive*]
- Contracts governed by law of a third party state**
- 2.7.17 **R** If a *firm* proposes to enter into a *distance contract* with a consumer that will be governed by the law of a country outside the *UK*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of the *UK*.
- [Note: regulation 16(3) of SI 2004/2095]
- [Note: articles 12 and 16 of the *Distance Marketing Directive*]

## 2.8 E-commerce

### Application

- 2.8.1 **R** This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *UK* with or for a *person* in the *UK*.

### Information about the firm and its products or services

- 2.8.2 **R** A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R), together with a statement which explains that it is on the *Financial Services Register* and includes its firm reference number;
- (5) if it is a professional firm:
  - (a) the name of the professional body or similar institution with which it is registered;
  - (b) the professional title;
  - (c) a reference to the applicable professional rules and the means to access them; and
  - (d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the *E-Commerce Directive*]

- 2.8.3 **R** If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

- 2.8.4 **R** A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:
- (1) the commercial communication must be clearly identifiable as such;
  - (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
  - (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
  - (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

- 2.8.5 **R** An unsolicited commercial communication sent by e-mail by a *firm* established in the *UK* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

#### Requirements relating to the placing and receipt of orders

- 2.8.6 **R** A *firm* must (except when otherwise agreed by parties who are not *consumers*):
- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
    - (a) the different technical steps to follow to conclude the contract;
    - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
    - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
    - (d) the languages offered for the conclusion of the contract;
  - (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
  - (3) (when an *ECA recipient* places an order through technological means) acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
  - (4) make available to the *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and 11(1) and (2) of the *E-Commerce Directive*]

- 2.8.7

R

For the purposes of ■ CONC 2.8.6R (3), an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.
- 2.8.8

R

Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the *E-Commerce Directive*]
- 2.8.9

R

Exception: contract concluded by e-mail

The requirements relating to the placing and receipt of orders (■ CONC 2.8.6 R) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: articles 10(4) and 11(3) of the *E-Commerce Directive*]

		<div>2.9</div> <div>Prohibition of unsolicited credit tokens</div>	2
		<div>Application</div>	
2.9.1	R	This section applies to any <i>firm</i> .	
		<div>Prohibition</div>	
2.9.2	R	<div>(1) A <i>firm</i> must not give a <i>person</i> a <i>credit token</i> if he has not asked for it.</div> <div>[Note: section 51 of CCA]</div> <div>(2) A request in (1) must be in a document signed by the <i>person</i> making the request, unless the <i>credit-token agreement</i> is a <i>small borrower-lender-supplier agreement</i>.</div> <div>(3) Paragraph (1) does not apply to the giving of a <i>credit token</i> to a <i>person</i>:<div>(a) for use under a <i>credit-token agreement</i> already made; or</div><div>(b) in renewal or replacement of a <i>credit token</i> previously accepted by that <i>person</i> under a <i>credit-token agreement</i> which continues in force, whether or not varied.</div></div>	
2.9.3	G	[deleted]	

2.10 Mental capacity guidance

Application

2.10.1

G

This section applies:

- (1) to a *firm*;
- (2) in relation to the following decisions:
  - (a) granting *credit* under a *regulated credit agreement*;
  - (b) significantly increasing the amount of *credit* under a *regulated credit agreement*; and
  - (c) setting a *credit limit* for running account credit.

2.10.2

G

- (1) The Mental Capacity Act 2005 sets out the legal framework concerning mental capacity for England and Wales. The Ministry of Justice has issued the Mental Capacity Act Code of Practice which, among other things, includes information on indications of mental capacity limitations and on how to assist people with making decisions.
- (2) The Adults with Incapacity (Scotland) Act 2000 provides the framework in Scotland for safeguarding the welfare and managing the finances of adults who lack capacity due to mental disorder or inability to communicate.
- (3) References in this section to a *firm's* knowledge, understanding, observation, suspicion, assumption or belief include that of the *firm's* employees, *appointed representatives*, agents and any others who act on behalf of the *firm*.  
  
[Note: footnote 2 of MCG]
- (4) In making a decision within ■ CONC 2.10.1 G, a *firm* should consider the *customer's* individual circumstances.

[Note: paragraph 2.4 of MCG]

Mental capacity

2.10.3

G

Mental capacity is a person's ability to make a decision. Whether or not a *customer* has the ability to understand, remember, and weigh up relevant



		<p>information will determine whether the <i>customer</i> is able to make a responsible borrowing decision based on that information.</p> <p>[Note: paragraph 2.1 of MCG]</p>
2.10.4	G	<p>A <i>firm</i> should assume a <i>customer</i> has mental capacity at the time the decision has to be made, unless the <i>firm</i> knows, or is told by a <i>person</i> it reasonably believes should know, or reasonably suspects, that the <i>customer</i> lacks capacity.</p> <p>[Note: paragraph 3.1 of MCG]</p>
2.10.5	G	<p>Where a <i>firm</i> reasonably suspects a <i>customer</i> has, or may have, some form of mental capacity limitation which would constrain the <i>customer's</i> ability to make a decision to borrow, the <i>firm</i> should not regard the <i>customer</i> as lacking capacity to make the decision unless the <i>firm</i> has taken reasonable steps without success to assist the <i>customer</i> to make a decision.</p> <p>[Note: paragraph 3.2 of MCG]</p>
2.10.6	G	<p>Amongst the most common potential causes of mental capacity limitations are the following examples, a mental health condition, dementia, a learning disability, a developmental disorder, a neurological disability or brain injury and alcohol or drug (including prescribed drugs) induced intoxication.</p> <p>[Note: paragraph 2.9 of MCG]</p>
2.10.7	G	<p>Where a <i>firm</i> understands or reasonably suspects a <i>customer</i> has a condition of a type in ■ CONC 2.10.6 G, this does not necessarily mean that the <i>customer</i> does not have the mental capacity to make an informed borrowing decision. See also ■ CONC 2.10.15 G.</p> <p>[Note: paragraph 2.10 of MCG]</p>
2.10.8	G	<p><b>Indications that a person may have some form of mental capacity limitation</b></p> <p>A <i>firm</i> is likely to have reasonable grounds to suspect a <i>customer</i> may have some form of mental capacity limitation if the <i>firm</i> observes a specific indication (behavioural or otherwise) that could be indicative of some form of limitation of the <i>customer's</i> mental capacity. Examples (amongst others) of indications might include:</p> <ol style="list-style-type: none"><li>(1) where a <i>firm</i> has an existing relationship with a <i>customer</i>, the <i>customer</i> making a decision that appears to the <i>firm</i> to be unexpected or out of character;</li><li>(2) a <i>person</i> who is likely to have an informed view of the matter, such as a relative, close friend, carer or clinician raising a concern with the <i>firm</i> as to the capacity of the <i>customer</i> to make a decision about borrowing;</li><li>(3) the <i>firm</i> understands or has reason to believe the <i>customer</i> has been diagnosed as having an impairment which led to the <i>customer</i> not having had mental capacity for similar decisions in the past;</li></ol>

- (4) the *firm* understands or has reason to believe the customer does not understand what the customer is applying for;
- (5) the *firm* understands or has reason to believe the *customer* is unable to understand the information and explanations provided by the *firm*, in particular concerning the key risks of entering into the agreement;
- (6) the *firm* understands or has reason to believe the *customer* is unable to retain information and explanations provided by the *firm* to enable the *customer* to make the decision to borrow;
- (7) the *firm* understands or has reason to believe the *customer* is unable to weigh up the information and explanations provided by the *firm* to enable the *customer* to make the decision to borrow;
- (8) the *customer* is unable to communicate a decision to borrow by any reasonable means;
- (9) the *customer* being confused about the personal information that the *firm* requires, such as date of birth or address.

[Note: paragraphs 3.14 and 3.15 of MCG]

### Practices and procedures

- 2.10.9** G (1) A *firm* should not unfairly discriminate against a *customer* who it understands, or reasonably suspects, has a mental capacity limitation, in particular, by inappropriately denying the *customer* access to *credit*.  
[Note: paragraph 4.8 of MCG]
- (2) It would not be inappropriate not to grant *credit* nor significantly increase the amount of *credit* under an agreement nor set a *credit* limit for running account credit where the *firm* reasonably believes the agreement or decision would be voidable at the instance of the *customer* or the agreement is void.
- 2.10.10** G (1) In accordance with *Principle 6*, *firms* should take reasonable steps to ensure they have suitable business practices and procedures in place for the fair treatment of *customers* who they understand, or reasonably suspect, have or may have a mental capacity limitation.  
[Note: paragraph 4.1 of MCG]
- (2) ■ **CONC 7.2.1 R** requires *firms* to establish and implement arrears policies and procedures, which include policies and procedures for the fair and appropriate treatment of *customers* the *firm* understands or reasonably suspects of having mental capacity limitations.
- 2.10.11** G A *firm* should document practices and procedures to set out the steps that it takes when it receives applications for *credit* from such *customers*.  
[Note: paragraph 4.2 of MCG]
- 2.10.12** G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation the *firm* should use its business practices and procedures to:

- (1) assist the *customer*, where possible, to make an informed borrowing decision; and
- (2) ensure its lending decision is informed and responsible in the circumstances and mitigates the potential risks to the *customer*.

[Note: paragraphs 4.3 and 4.5 of MCG]

**2.10.13** G As stated in the Mental Capacity Act Code of Practice, it is important to balance a person's right to make a decision with that person's right to safety and protection when they are unable to make decisions to protect themselves.

[Note: paragraph 4.5 (box) of MCG]

**2.10.14** G *Firms* should present clear, jargon-free information in explaining *credit agreements* in a way that makes it as easy as possible for the *customer* to understand. *Firms* should consider ways to present information in alternative, more 'user-friendly' formats where it appears appropriate to do so, subject to compliance with the relevant statutory requirements.

[Note: paragraph 4.20 of MCG]

**2.10.15** G Where a *firm* knows, or reasonably suspects, that a *customer* has or may have one of the conditions in ■ CONC 2.10.6 G this could justifiably act as a trigger for the *firm* to consider the potential specific steps in giving effect to the *firm's* practices and procedures for assessing:

- (1) whether or not the *customer* appears able to understand, remember, and weigh up the information and explanations provided and, when having done so, make an informed borrowing decision;
- (2) whether the *customer* appears able to afford to make *repayments* under the *credit agreement* in a *sustainable* manner without adverse consequences to the *customer's* financial circumstances; and
- (3) whether the *credit* the *customer* is seeking is clearly unsuitable (given the *customer's* individual circumstances and, to the extent that the *firm* is aware, the *customer's* intended use of the *credit*).

[Note: paragraphs 2.5 and 2.11 of MCG]

**2.10.16** G *Firms'* practices and procedures should be designed to assist *customers* that *firms* understand have, or reasonably suspect of having, mental capacity limitations to overcome, to the extent possible, the effect of the limitations and place them, to the extent possible, on an equivalent basis to *customers* who do not have such limitations, to increase the likelihood of *customers* being able to make informed borrowing decisions.

[Note: paragraph 4.4 of MCG]

### Allowing sufficient time for decisions

**2.10.17** G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation it should consider allowing the *customer*:

- (1) sufficient time in the circumstances to weigh up the information and explanations the *firm* has given;
- (2) sufficient time in the circumstances to make an informed borrowing decision;
- (3) to defer a decision to borrow to a later date.

[Note: paragraphs 4.26, 4.27 and 4.28 of *MCG*]

Sustainability of borrowing

2.10.18

G

Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation it should apply a high level of scrutiny to the *customer's* application for *credit*, in order to mitigate the risk of the *customer* entering into *unsustainable* borrowing.

[Note: paragraphs 4.32 and 4.33 of *MCG*]

2.10.19

G

- (1) A *firm* should balance the risk of a *customer* taking on *unsustainable* borrowing against inappropriately or unnecessarily denying *credit* to a *customer*.
- (2) Where a *firm* understands or reasonably suspects a *customer* has or may have a mental capacity limitation, it should undertake an appropriate and effective *creditworthiness assessment* (see ■ CONC 5.2A) and it would be appropriate not to place over-reliance on information provided by the *customer* for the assessment.

[Note: paragraph 4.34 of *MCG*]

2.10.20

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Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation the *firm* should take particular care that the *customer* is not provided with *credit* which the *firm* knows, or reasonably believes, to be unsuitable to the *customer's* needs, even where the *credit* would be affordable.

[Note: paragraph 4.43 of *MCG*]

## 2.11 Remuneration and performance management policies, procedures and practices

### Application

- 2.11.1 **R** This section applies to a *firm* with respect to:
- (1) *credit-related regulated activity*; and
  - (2) *unregulated activity* that is financed by a *credit agreement* in respect of which the *firm* is carrying on *consumer credit lending* or *credit broking*.

- 2.11.2 **R** This section does not apply to a *firm* subject to:
- (1) any of the remuneration provisions in ■ SYSC 19B (AIFM Remuneration Code) to ■ SYSC 19G (MIFIDPRU Remuneration Code); or
  - (2) remuneration provisions made by an *EEA regulator* pursuant to any of the following:
    - (a) *CRD*; or
    - (b) *AIFMD*; or
    - (c) the *UCITS Directive*; or
    - (d) *MiFID*.

### Purpose

- 2.11.3 **G**
- (1) The purpose of this section is to amplify the requirements in *Principle 3* and ■ SYSC 4.1.1R to ensure *firms* identify and effectively manage the risks to *customers* that may arise out of *firms'* policies, procedures and practices for the *remuneration* or performance management of their *employees*, *appointed representatives* and such of their individual agents within the meaning of ■ CONC 14 who interact with *customers*.
  - (2) This section does not apply to the commercial *remuneration* or commission arrangements between two or more separate *firms*.
  - (3) The risks this section addresses may arise out of a *firm's* policies for remunerating its *employees*, *appointed representatives* or individual agents for performance in carrying on *credit-related regulated activities*. Such risks may arise, for instance, where staff *remuneration*

(for example, a bonus or commission) is determined in whole or in part by the volume or value of *credit* provided or debt collected. These risks may, in addition, arise where an individual's formal (for example, annual appraisals) or informal (for example, day-to-day interactions with their line manager) performance management focuses on targets or measures of the volume or value of *credit* provided or debt collected.

- (4) These risks may also arise out of a *firm's* policies for remunerating such individuals for performance in carrying on *unregulated activities* that are financed by *credit agreements* in respect of which the *firm* is carrying on *consumer credit lending* or *credit broking*. An example is where a *firm* incentivises an individual to sell or supply *goods* or services the purchase of which may be financed (in whole or in part) by a *credit agreement* in respect of which the *firm* is carrying on *credit broking* or *consumer credit lending*. The use of incentives in these circumstances creates the risk that the individual may, for example, provide or arrange *credit* to fund purchases when it is not appropriate to do so.
- (5) Nothing in this section requires a *firm* to act in a way that would be inconsistent with its obligations under employment or contract law.

#### Requirements

2.11.4

**R**

- (1) A *firm* must in relation to any risk of failure by the *firm* to comply with its obligations under the *regulatory system* arising from its *remuneration* or performance management policies, procedures and practices:
  - (a) establish, implement and maintain adequate policies and procedures designed to detect this risk; and
  - (b) put in place adequate measures and procedures designed to manage this risk.
- (2) A *firm* must, when deciding how to comply with (1), take into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business.

#### Examples of measures and procedures to manage risks

2.11.5

**G**

Examples of measures and procedures which *firms* might introduce, where appropriate, to manage the risks to which this section applies, include:

- (1) undertaking monitoring of the nature of sales activities and *debt collecting*;
- (2) collecting management information to enable the *firm* to monitor and identify trends or patterns in *employee, appointed representative* or individual agent behaviour that could be used to detect these risks;
- (3) establishing procedures to ensure appropriate actions are taken if an *employee, appointed representative* or individual agent is found to have behaved inappropriately; and

- (4) maintaining arrangements to ensure the approval, oversight and regular review of *remuneration* and performance management arrangements by an appropriate governance committee or senior management.

2.11.6 G In relation to ■ CONC 2.11.5G(1), where the activities of an *employee*, *appointed representative* or individual agent are monitored by that *person's* manager, any potential conflicts of interest that arise should be adequately managed (for example, if the manager's *remuneration* is affected by the volume or value of sales or of debt collected by that team member).

**Non-Handbook guidance**

2.11.7 G A *firm* should also be aware of the finalised guidance entitled Staff Incentives, Remuneration and Performance Management in Consumer Credit.  
[Note: see <https://www.fca.org.uk/publications/guidance-consultations/gc17-6-proposals-staff-incentives-and-performance-management>]





## Distance marketing information

This Annex belongs to ■ CONC 2.7.2 R (The distance marketing disclosure rules)

### Information about the firm

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *UK*, the name of that representative and the geographical address relevant for the *consumer's* relations with that representative.
- (3) Where the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant to the *consumer's* relations with that professional.
- (4) The particulars of the public register in which the *firm* is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (GEN 4), a statement that the *firm* is on the *Financial Services Register* and its firm reference number.

### Information about the financial service

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related fees, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the firm's control and that past performance is no indicator of future performance.
- (8) Notice of the possibility that other taxes or costs may exist that are not paid via the *firm* or imposed by it.
- (9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long the *firm's* offer applies as it stands.
- (10) The arrangements for payment and performance.
- (11) Details of any specific additional cost to the *consumer* for using a means of distance communication.

### Information about the contract

- (12) The existence or absence of any right to cancel under section 66A or 67 of the CCA or the cancellation rules in CONC 11.1 and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those provisions or rules, as well as the consequences of not exercising the right to cancel.
- (13) The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
- (14) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.

- (15) Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
- (16) [deleted]
- (17) Any contractual clause on the law applicable to the contract or on the competent court, or both.
- (18) In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.

### Information about redress

- (19) How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to that body, together with equivalent information about any other applicable named complaints scheme
- (20) Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities.

[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]

## Abbreviated distance marketing information

2

This Annex belongs to ■ CONC 2.7.11 R.

- (1) The identity of the *person* in contact with the *consumer* and his link with the *firm*.
- (2) A description of the main characteristics of the financial service.
- (3) The total price to be paid by the *consumer* to the *firm* for the financial service, including all taxes paid via the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (4) Notice of the possibility that other taxes and/or costs may exist that are not paid via the *firm* or imposed by the *firm*.
- (5) The existence or absence of any right to cancel in accordance with the cancellation provisions or *rules* (in sections 66A or 67 of the CCA or in CONC 11.1) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay on the basis of the cancellation provisions or *rules*.
- (6) That other information is available on request and the nature of that information

[Note: article 3(3)(b) of the *Distance Marketing Directive*]

