Assessing creditworthiness in consumer credit – Feedback on CP17/27 and final rules and guidance

Policy Statement
PS18/19

July 2018

This relates to

Consultation Paper 17/27 which is available on our website at www.fca.org.uk/publications

Please send any comments or queries to:
Toby Watkinson
Policy Consumer Credit
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Telephone:
020 7066 2740

Email:
cp17-27@fca.org.uk

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1 Summary

Introduction

1.1 In this policy statement (PS) we summarise and respond to feedback to Consultation Paper CP17/27: *Assessing creditworthiness in consumer credit*. We also publish final rules and guidance in our Consumer Credit sourcebook (CONC).

Who this affects

1.2 Who needs to read this whole document:

- consumer credit lenders
- peer-to-peer (P2P) platforms
- trade bodies representing these firms

1.3 Who only needs to read this summary:

- other consumer credit firms and trade bodies
- consumer organisations

1.4 Who doesn't need to read this consultation, but it affects them:

- consumers who take out a loan or other credit product

The wider context

1.5 The provision of consumer credit has a key economic function and is a largely beneficial activity, enabling borrowers to purchase goods and services and spread repayments over time. Most borrowers repay without difficulty and without financial distress. However, there are particular risks associated with high-cost credit or where customers may be non-prime[1] or in vulnerable circumstances. There may also be wider macro-economic and prudential risks, which fall primarily to the Bank of England (the Bank), including the Prudential Regulation Authority (PRA).

1.6 We published CP17/27 to clarify our expectations in relation to the assessment of creditworthiness in consumer credit.[2] This was in response to evidence both of

1 A 'non-prime' customer is assumed to be one without a good credit history.
2 CP17/27: Assessing creditworthiness in consumer credit: Proposed changes to our rules and guidance (July 2017) – www.fca.org.uk/publication/consultation/cp17-27.pdf

under-compliance with our rules but also of firms having procedures which may be unnecessarily costly or restrictive. Both may be due to misunderstandings.

1.7 Creditworthiness comprises credit risk (to the firm) and affordability (for the borrower). Most firms have a strong commercial incentive to assess credit risk, including the probability of default, but may have less incentive to assess the risk that the credit will impact negatively on the customer's wider financial situation in particular where these customers will still be profitable for the firm.

1.8 We want to protect consumers from the harm that can arise when they are granted credit that is predictably unaffordable at the point it is taken out. At the same time, we want consumers to be able to access credit where it is affordable.

1.9 We undertook research to establish how firms were interpreting and applying our existing rules and guidance on creditworthiness assessment, which we published alongside CP17/27. We have used this research to inform our approach.

1.10 We have also taken account of relevant supervisory experience, and liaison with firms and trade bodies and other stakeholders.

1.11 We announced in our Business Plan for 2018/19 that we intend to launch a market study on credit information.[3] This will build on responses to CP17/27 where we invited views on issues relating to accessing and using data, in particular from credit reference agencies (CRAs). The market study will also consider possible new sources of information, such as the potential impact of Open Banking.

What we are changing

1.12 The rules and guidance in Appendix 1 come into effect on 1 November 2018. This allows firms three months to make any necessary changes to their systems and processes. We remain of the view, however, that the changes should not give rise to costs of more than minimal significance where firms are complying with our existing rules and principles. As such, there is no cost benefit analysis (CBA).

1.13 The changes clarify our existing rules and guidance in CONC 5 (Responsible lending) and 6 (Post contractual requirements), and the application of the general requirements on firms in our Senior Management Arrangements, Systems and Controls sourcebook (SYSC). There are also some minor consequential changes to other parts of CONC, and the Handbook Glossary.

The outcome we are seeking

1.14 We want firms to make a reasonable assessment, not just of whether the customer will repay, but also of their ability to repay affordably and without this significantly affecting their wider financial situation. This should minimise the risk of financial distress to customers.

3 Business Plan 2018/19 – www.fca.org.uk/publication/business-plans/business-plan-2018-19.pdf

1.15 At the same time, we want to avoid being too prescriptive, as this could have harmful unintended consequences, including for the cost and availability of credit. We want firms to take a proportionate approach, taking into account the costs and risks of the credit for the individual customer.

1.16 This is in line with the regulatory principles in the Financial Services and Markets Act 2000 (FSMA) relating to proportionality, the desirability of sustainable growth and recognising differences in the nature and objectives of different businesses.[4]

1.17 In following our new rules and guidance, firms should use their judgement to decide what is appropriate in the circumstances. There may be multiple ways in which firms can comply with our rules, and we want firms to have a reasonable degree of flexibility according to the nature of the product and customer base, provided that they can demonstrate the basis for their decisions, if challenged.

1.18 Firms may use a variety of methods and processes to assess credit risk and affordability. These may be automated or manual, or a combination of these. Firms may assess credit risk and affordability together, or separately, and processes may be integrated or sequential. All of these can deliver good outcomes for customers when done well.

1.19 We do not want to discourage the use and development of automated systems that may provide more reliable results than asking the customer for large amounts of information or documentation. Our rules are neutral in terms of business delivery channel. However, where processes are automated, we expect firms to have appropriate policies and procedures to ensure they can adequately manage any risks associated with those processes. The same applies if the firm relies to a significant extent on data or information from CRAs or other third parties.

1.20 Both affordability and credit risk assessment have material probabilistic components, given the potential impact of unforeseeable events and of individual behaviour. While there are metrics that can be used to inform firms' assessment of credit risk (the probability of default), there are no established metrics that can provide certainty of affordability at loan origination. Creditworthiness assessment is not an exact science, and we recognise that affordable loans can become unaffordable due to a change in the customer's circumstances or wider economic events. It can also be affected by how the customer operates the agreement and organises their finances, which may be influenced by behavioural biases or low financial capability.

1.21 However, we do expect firms to have effective processes in place aimed at eliminating lending that is foreseeably unaffordable. This should reduce the level of false positives (credit advanced that will turn out to be unaffordable). At the same time, we want to reduce false negatives (applications declined when the credit would be affordable) arising out of a mistaken view of what is required by our rules, as both may cause harm to consumers.

1.22 Our approach is principles-based, rather than prescriptive, with a strong emphasis on proportionality. Lenders must assess affordability on the basis of sufficient information but we do not prescribe in detail what this should comprise or whether and how information should be verified. The extent of an assessment, and the types

4 Section 3B(1)(b), (c) and (f) of FSMA.

and sources of information used, should depend on and be proportionate to relevant factors, and in particular the costs and risks of the credit in the individual case.

1.23 We want firms to establish, implement and maintain clear and effective policies and procedures for assessing creditworthiness, including affordability. These should set out the principal factors to be taken into account, and should be approved by the firm's senior management.[5] The effectiveness of the policies and procedures, and the firm's compliance with our rules, should be reviewed periodically, with changes made to address any deficiencies. The firm should also keep a record of each transaction where credit is granted, to enable the FCA to monitor the firm's compliance.

1.24 Making our expectations clearer should make it easier for firms to comply with our rules, leading to better outcomes for customers.

1.25 This PS does not affect how affordability is considered for regulated mortgage contracts, which are subject to a separate regulatory regime.

Measuring success

1.26 We will evaluate the success of our rule and guidance changes through our supervision of firms and monitoring regulatory returns and complaints. We may also undertake research or multi-firm work to assess the changes firms have made.

1.27 A number of respondents to CP17/27 suggested that it would be helpful to have examples of good and bad practice in assessing affordability. Suggestions included examples for different products or sales channels, illustrating the FCA's expectations in terms of processes and information used or verified.

1.28 However, other respondents felt that this would be unnecessary, if the final rules and guidance are sufficiently clear and easy to navigate. Some felt that detailed examples would be inconsistent with the FCA's principles-based approach, and could be misinterpreted by firms. They might also encourage a 'tick-box' approach rather than a proper assessment of affordability in the individual circumstances. They might discourage innovative approaches which could enhance firms' assessments and lead to better outcomes for customers.

1.29 We have included in Chapter 3 some answers to common misconceptions that arose in response to our consultation, and some illustrative examples on proportionality. These are not exhaustive or definitive but highlight how different factors can affect the nature and extent of an assessment. We have also sought to further clarify our expectations in the final rules and guidance, and have addressed issues raised by respondents.

1.30 We do not think that additional guidance is needed at this stage, and we agree that this could carry risks. We want firms to make a reasonable and proportionate assessment, taking account of the costs and risks in each case. However, we are keen to hear views on this, including on whether additional guidance might be beneficial, as well as any potential drawbacks (see paragraph 1.36 below).

5 We have set out near-final rules to extend the Senior Managers & Certification Regime (SM&CR) to all consumer credit firms – www.fca.org.uk/publication/policy/ps18-14.pdf

Summary of feedback and our response

1.31 We received 45 responses from a range of stakeholders. We summarise in Chapter 2 the key issues raised by respondents, and our feedback. In some cases we have amended our original proposals in light of views and evidence from stakeholders. Where we have not done so, we explain why.

1.32 In particular, we have made changes to:

- make clearer the distinction between credit risk and affordability risk, and that a firm should not grant credit (or increase the credit limit significantly) unless it has carried out a creditworthiness assessment in accordance with our rules and had proper regard to the outcome of that assessment in respect of affordability
- allow household or other income to be taken into account in the assessment, provided that the firm can reasonably expect such income to be available to the borrower for repayment of the credit
- clarify that income is not limited to earned income
- clarify the meaning of non-discretionary expenditure, and that where another person's income is taken into account in the assessment, account must also be taken of that person's non-discretionary expenditure
- identify the factors that should inform the scope, extent and proportionality of an assessment, and that different factors may influence this in different directions (and that the purpose of the loan may be taken into account where appropriate)
- the treatment of business lending, where our rules allow flexibility for firms to tailor the assessment to the nature of the product and customer
- the assumptions to be used for assessing affordability in relation to credit cards and other running-account credit

Equality and diversity considerations

1.33 We have considered the equality and diversity issues that may arise as a result of our new rules and guidance, and have taken account of CP responses on this. As noted above, we have amended our original proposals to allow household or other income to be taken into account, where appropriate. We recognise that otherwise our proposals could have impacted negatively on certain groups.

1.34 Overall, we do not consider that the final changes materially impact any of the groups with protected characteristics under the Equality Act 2010. We will, however, take account of any equality and diversity implications as part of monitoring the impact of the new rules and guidance.

Next steps

1.35 If your firm is affected by these changes, you should review your policies and procedures in light of the new rules and guidance, and make changes where needed. You should also ensure that you keep your policies and procedures under review to monitor compliance with the requirements on an ongoing basis.

1.36 If you have views on whether the FCA should consider publishing further guidance, with examples of good and bad practice in assessing affordability, and on where such guidance might be particularly helpful (or alternatively, where the risks may outweigh the potential benefits), please get in touch with us.

1.37 You can send us your views at the following address:

Consumer Credit Policy
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN
cp17-27@fca.org.uk

2 Feedback on our proposed changes and our response

2.1 This chapter sets out the feedback received on our proposals.

2.2 Table 2.1 summarises the key changes and sets out where these can be found in the instrument at Appendix 1.

Table 2.1: Key changes

Existing CONC provisions	Final rules and guidance
CONC 5.2, 5.3 and CONC 6.2	Combined in a new CONC 5.2A, covering both the initial assessment by lenders and post-contractual credit increases (5.2A.4R)
CONC 5.2.1R	Minor changes to scope of creditworthiness rules (CONC 5.2A.2R); clarifying that creditworthiness comprises credit risk and affordability (CONC 5.2A.10R); elaborating on the meaning of affordability (CONC 5.2A.12R)
CONC 5.2.2R	Single test of creditworthiness (CONC 5.2A.4R) applying to all relevant agreements with some limited exceptions (CONC 5.2A.2R)
CONC 5.2.2R, 5.2.3G and 5.2.4G	Clarifying the meaning of proportionality and the factors to be taken into account by firms when deciding on the extent and scope of an assessment and the types and sources of information to use or verify (CONC 5.2A.20R to 5.2A.25G)
CONC 5.2.5R and 5.2.6G	Clarifying the obligation to assess potential impacts on a guarantor (CONC 5.2A.31R and CONC 5.2A.32G)
CONC 5.3.1G	Clarifying the meaning of affordability (CONC 5.2A.12R) and the role of income and expenditure information (CONC 5.2A.15R to 5.2A.19G); assumptions to be used for open-end agreements and running-account credit (5.2A.26R to 5.2A.28G)
CONC 5.3.2R and 5.3.3G	Elaboration of requirements relating to firms' policies and procedures for creditworthiness assessments (CONC 5.2A.33R and 5.2A.34G); clarifying expectations in relation to verification of information (CONC 5.2A.20R and 5.2A.24G)
CONC 5.3.4R	Pawnbroking carve-out becomes an exception where certain conditions apply (CONC 5.2A.2R)
CONC 5.5	Moved to new CONC 5.5A covering assessments by peer-to-peer (P2P) platforms (to parallel requirements on lenders); expanded to include post-contract credit increases under P2P agreements (CONC 5.5A.5R)

Scope of regime

2.3 We proposed minor technical changes to the scope of our creditworthiness rules, largely to address anomalies that arose when regulation was transferred to the FCA.

2.4 In particular, we proposed to exclude non-commercial agreements and small borrower-lender-supplier agreements for restricted-use credit, to reflect the previous position under the Consumer Credit Act 1974 (CCA). We also proposed to apply the rules without limitation to agreements financing payments arising on, or connected with, a person's death. Again, this reflects the previous position under the CCA.

2.5 Certain types of agreement are currently exempt from the creditworthiness rules but subject to a separate obligation to assess the potential for the commitments to negatively affect the customer's financial situation. We proposed to amalgamate these into a single requirement to assess creditworthiness, including affordability.

2.6 We proposed transitional provisions to allow firms to make assessments under existing CONC rules where an application process has started when the new rules come into force, provided that the process is completed within one month.

2.7 The vast majority of respondents agreed with our proposals. However, some argued that the rules should apply to non-commercial agreements (such as loans from friends or family) and unarranged overdrafts.

2.8 Many industry respondents expressed concerns about the nature of the proposed transitional arrangements, and considered that a longer period would be appropriate due to the technical changes that would be needed.

2.9 In CP17/27 we asked:

Q1: ***Do you agree with our proposed changes to the scope of the creditworthiness rules and proposed transitional arrangements?***

Our response

In view of the broad support expressed, we are proceeding with the changes to the scope of our rules as proposed.

Non-commercial lending (where the lender is not acting by way of business) is excluded from most CCA provisions, and lenders do not need FCA authorisation. As such, they are not subject to our rules. Such lending was previously exempt from CCA creditworthiness requirements, and its inclusion within the CONC regime was an oversight, which we are addressing.

Unarranged overdrafts are subject to the Consumer Credit Directive (CCD) and Member States are precluded from requiring a creditworthiness assessment, even if that were feasible. We are tackling issues relating to unarranged overdrafts through our high-cost credit review – we published a consultation paper (CP18/13) on 31 May 2018, which closes on 31 August 2018.[6]

In light of views expressed by industry respondents we have decided to delay implementation of the new rules until 1 November 2018. This will allow firms three months to make any necessary changes. As

6 CP18/13: High-cost Credit Review: Overdrafts (May 2018) – www.fca.org.uk/publication/consultation/cp18-13.pdf

such, we no longer consider there is a need for a specific transitional arrangement for pipeline agreements.

Assessing creditworthiness

2.10 As under the current regime, we proposed that firms must make a reasonable assessment of creditworthiness before making a regulated credit agreement or significantly increasing the amount of credit or the credit limit.

2.11 We did not propose to prescribe exactly when an increase is significant, but to clarify that a number of separate increases, which may be insignificant individually, could amount to a significant increase, triggering a further creditworthiness assessment.

2.12 There was broad support from respondents for this clarification, although some requested guidance on what would constitute a significant increase. Some consumer groups argued that an assessment should be required for any credit limit increase. Consumer groups also raised concerns around unsolicited credit limit increases.

The meaning of affordability

2.13 We proposed to clarify that creditworthiness includes both credit risk to the lender and affordability for the borrower. We also proposed a new definition of 'affordability risk' in terms of the risk to the customer of not being able to make repayments or of these having a significant negative effect on their overall financial situation.

2.14 We proposed that repayments should be out of the customer's own income, unless the customer clearly intended to repay using savings or other assets, and that account should not be taken of the income of any other individual.

2.15 Respondents agreed with the distinction drawn between credit risk and affordability and the proposal to clarify that creditworthiness assessment should include assessment of affordability for the borrower. Most respondents were supportive of the proposed definition of affordability risk, although one respondent raised concerns that the proposals would in effect require two separate assessments.

2.16 Some industry respondents requested greater clarity on whether assessments should be made at an individual or cohort level. Some raised concerns at the implication that credit risk should be assessed by reference to missing a single repayment.

2.17 A number of industry respondents argued that the draft rules were lengthy and complex and the proposals did not go far enough in terms of bringing clarity. As such, they suggested there was a risk firms might not make assessments on a consistent basis.

2.18 Some consumer organisations suggested that more guidance should be provided on aspects of the definition of affordability risk, including on what would constitute a significant adverse impact on the customer's financial situation. Some argued that the proposals should include more detail on how other financial commitments should be taken into account in the assessment.

2.19 A large number of industry and consumer respondents raised significant concerns about the proposal to assess the affordability of repayments solely out of the customer's income. It was felt that this could increase financial exclusion, and so should be taken into account in any equality impact assessment. It would also be a major departure from current industry practice, so could have a significant impact on firms' processes, with associated cost implications. They argued strongly that it should be possible to take household income into account in appropriate cases.

2.20 In CP17/27 we asked:

> **Q2:** ***Do you agree with our approach to the meaning of affordability and the factors that should be taken into account by firms?***

Our response

In view of the broad support expressed on the distinction between credit risk and affordability, we are proceeding with the proposed high-level changes including the definition of affordability risk. Our view is that these clarify that we expect firms to consider more than just the credit risk to themselves when assessing creditworthiness.

We have added an explicit reference to 'credit risk' as an element of creditworthiness, but do not want to fetter how firms assess credit risk.

We recognise the concerns around assessing credit risk by reference to missing a single payment. However, this reflects a misunderstanding of our proposals. The reference to 'one or more repayments' was to cover the situation where credit may be repaid by a single bullet payment rather than by instalments. We have amended the reference to 'repayments' while making clear that, in some cases, missing a single repayment may be relevant to credit risk or affordability. But we accept that this will not always be the case.

We have clarified that 'repayments' and 'charges' do not include an option-to-purchase fee under a hire-purchase agreement.

We do not agree that our proposals would require firms to have two separate processes to assess credit risk and affordability. They can have a single process, provided that this incorporates affordability aspects sufficiently.

We have made clear in our rules that a firm must not enter into a regulated credit agreement, or increase significantly the amount of credit or the credit limit, unless it has carried out a creditworthiness assessment in accordance with our rules and had proper regard to it in respect of affordability. This is implicit in the current CONC provisions, but we are making it explicit.

We consider that the proposals are sufficiently clear that the assessment must be at the individual level, and that firms' policies and procedures must be effective in ensuring reasonable assessments.

Significant credit limit increases
In view of broad support from respondents, we are proceeding with the proposal to clarify that a significant credit limit increase can be made up of a number of separate increases. We do not consider it appropriate to define what is meant by 'significant', as this may vary according to the circumstances. The term 'significant' is used in the CCD, and we are precluded from requiring an assessment in cases where there is no significant increase in credit.

The issue of unsolicited credit limit increases has been considered as a part of our Credit Card Market Study.[7] As under our current rules, firms will be required to assess creditworthiness prior to any significant credit limit increase.

Household income
We recognise the widespread concerns regarding the proposal that repayments should be made solely out of the customer's income, with no account being taken of the income of any other person. We have amended our proposals to address these concerns. Firms will therefore be able to take account of other income, including from other household members, where they reasonably expect this to be available to the borrower for repayment of the credit.

We do not believe it would be helpful to prescribe what constitutes sufficient evidence of this, but we expect firms relying on this provision to be able to demonstrate, if challenged, that it was reasonable for them to expect that the income would be available to make the repayments.

Where another person's income is taken into account in the assessment, account should also be taken of that person's non-discretionary expenditure.

Guidance and clarity
We recognise the concerns that have been expressed around the desirability of further guidance and detail on what firms should take into account when making creditworthiness assessments. However, we consider that the new rules and guidance, as amended, should sufficiently clarify our expectations. Our approach allows firms to design their own processes having regard to proportionality. But we are willing to consider possible further guidance.

We also recognise the concerns expressed about the length and complexity of the rules and guidance. In many cases, this reflects our aim to further clarify the rules by means of guidance, which inevitably increases the overall length of the instrument. We also note that there are discrete sections for peer-to-peer platforms, and for specific

7 www.fca.org.uk/publications/market-studies/credit-card-market-study

types of product such as running-account credit and guarantor lending. These will not be relevant to most firms. However, we have sought to clarify and simplify where possible.

Income and expenditure

2.21 We proposed that firms would not need to establish or estimate a customer's income where it is obvious in the circumstances that the credit is affordable. Where this is not the case, they would have to take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's income.

2.22 The firm would also need to take account of any likely reduction in income during the period of the credit, where this is reasonably foreseeable and could have a material impact on affordability risk.

2.23 We also proposed that, where firms have to take income into account, they should establish or estimate non-discretionary expenditure, unless it is obvious that this is unlikely to have a material effect on affordability risk. Similarly, the firm should consider whether it is reasonably foreseeable that non-discretionary expenditure is likely to increase over the period of the credit where this could have a material impact on affordability risk.

2.24 We indicated that we did not intend to prescribe the use of debt-to-income or repayment-to-income ratios, but that it was open to firms to take these into account in their assessments. We proposed that a high debt-to-income (DTI) ratio might be indicative of high affordability risk, but that this was not necessarily the case and we did not expect firms to establish debts and income in all cases. We also recognised that there might be practical difficulties in doing so.

2.25 Most industry respondents broadly agreed with our proposal to provide some discretion in circumstances where it is obvious that the credit is affordable. They also welcomed our clarification that establishing an exact amount of income, or disposable income, may not always be necessary.

2.26 However, some expressed concern about a lack of clarity in our proposals around when it might be 'obvious' that credit is affordable, and suggested that further guidance on this point would be useful.

2.27 Consumer organisations were concerned about the level of discretion afforded to firms, and felt this should be restricted. Some respondents argued that an income and expenditure assessment should be required in all cases.

2.28 Most respondents were supportive of the proposal that firms should consider reasonably foreseeable changes in income and non-discretionary expenditure over the period of the credit where this is likely to have a material impact on affordability risk. However, some industry respondents expressed concern about the extent to which firms would be required to make assumptions, or obtain from the customer details about possible future changes in their circumstances. They saw this as disproportionate and unduly intrusive in most cases.

2.29 Industry respondents also highlighted practical difficulties associated with making assumptions about future expenditures such as housing costs. They suggested that this would be unnecessary if firms provided for a 'buffer' in their assessments to accommodate future possible changes in expenditure.

2.30 Industry respondents agreed with our approach to not mandate the use of DTI or other ratios as part of the assessment, and highlighted the practical difficulties associated with establishing income and indebtedness. Consumer groups, on the other hand, felt that such ratios would be useful (see Q4 below).

2.31 In CP17/27 we asked:

Q3: ***Do you agree with our proposals on the use of income and expenditure information?***

Our response

In view of the broad support for our approach to this issue, we are proceeding with the proposed changes. This reflects our fundamental approach of setting high-level principles where firms should use their judgement to determine what is appropriate in the circumstances, having regard to the nature of their products and customers and the costs and risks involved.

We consider that the changes we consulted on clarify our existing requirements, provide a helpful framework for considering when it might be appropriate to take income and expenditure into account, and to what extent.

We do not think it would be appropriate to prescribe how income and non-discretionary expenditure should be taken into account in an assessment. This will depend upon the circumstances and issues of proportionality.

Income
In relation to income, we are making clear that this is not limited to salary and wages. For example, where appropriate, it can include income from savings, or income from another person (such as where household finances are pooled).

Our CP proposals made clear that, in considering income, it is not generally sufficient to rely on self-certification by the customer, without independent evidence. We are clarifying that this means a statement of current income, rather than changes that may be expected over the period of the credit.

Expenditure
We are also clarifying the meaning of non-discretionary expenditure. Our proposals noted that this can include payments the customer has a contractual or statutory obligation to make. We recognise, however, that some obligations may be shared with another person, or arrangements may have been made for their payment (for example, through a debt

management plan), so our rules will allow both scenarios to be taken into account as appropriate.

Firms can also take into account a likely reduction in non-discretionary expenditure where there is evidence that the customer can easily exit from a contractual commitment and intends to do so.

Estimating likely future changes
We recognise the concerns that have been expressed on the extent to which firms are required to estimate likely future changes in income and non-discretionary expenditure. However, we do not consider that these requirements are unduly onerous or amount to a substantive change.

We expect firms to base their assessment on information available to them at the time (although further enquiries may be necessary in certain cases), and not to ignore information which may suggest a material change in the customer's circumstances during the period of the credit. We expect this to be taken into account only to the extent that likely future changes are reasonably foreseeable and may have a material impact on affordability risk.

For example, a change in mortgage or rental payments over the period of the credit (or the assumed duration in the case of open-end agreements) may be relevant to affordability risk. However, we only expect firms to take into account what is reasonably foreseeable, based on information available to them at the time, or obtained after further enquiry where appropriate. Firms should exercise their judgement on what is reasonable.

We recognise the practical issues that have been raised regarding the availability of information on possible changes to mortgage or rental payments, and more generally in relation to income and expenditure and other relevant information. We consider these further under our response to Q7 below.

Further guidance
We also recognise the concerns that have been raised over the interpretation of when it might be 'obvious' that credit is affordable, and that some firms would like more detail, or examples of specific circumstances when income and expenditure ought to be taken into account. On the other hand, other industry respondents see such examples as unnecessary, and carrying inherent risks, and argue that firms should be free to exercise discretion according to the particular circumstances, subject to the high-level principles in our rules.

We include in Chapter 3 some examples to illustrate how proportionality may affect a firm's policies and procedures. As indicated in Chapter 1, we would welcome views on whether further guidance might be useful, and in what areas, and how this could be achieved while minimising the risk of unintended consequences.

Proportionality

2.32 To reflect our principles-based approach, we proposed to make a rule specifying that the extent and scope of a creditworthiness assessment, and the steps that must be taken to satisfy the requirement that the assessment is a reasonable one, should depend upon, and be proportionate to, the individual circumstances.

2.33 We proposed a number of factors which firms should consider in determining what is proportionate. These principally relate to the nature and amount of the credit, the costs of the credit, the number and amount of repayments, and potential adverse consequences of non-payment, including default charges.

2.34 We also proposed that the volume and content of information that must be taken into account, and the steps that may need to be taken to evaluate that information and confirm its validity, should depend on the level of affordability risk arising out the agreement. Factors affecting that risk would include the actual and potential costs of the credit and the total amount payable, both in absolute terms and relative to the customer's financial circumstances, where known.

2.35 We proposed to specify that potential indicators of high affordability risk might include a high DTI ratio or a high level of credit risk.

2.36 Most respondents were supportive of our approach to proportionality, and broadly agreed with the factors identified that may inform the extent and scope of an assessment. There was also broad support for the proposition that affordability risk may be high where the customer is highly indebted relative to income.

2.37 Some industry respondents argued that default charges should not be taken into account in the assessment, while others argued that low (or no) charges should be relevant to proportionality even if the cost of the credit is high.

2.38 Industry respondents argued that there should be a different approach for business lending, reflecting the nature of the product and customer. In particular, income may be variable and uncertain in the case of business customers, and the loan may be for the purpose of investment, to provide the means for repayment.

2.39 Some consumer organisations argued for a more prescriptive approach incorporating quantitative thresholds, such as DTI, or setting maximum arrears rates by sector.

2.40 In CP17/27 we asked:

> **Q4:** ***Do you agree with the factors which we propose that firms should have regard to when considering proportionality of processes for assessing creditworthiness including affordability?***

Our response

In view of the broad support expressed, we are proceeding with the proposed changes.

As above, this reflects our fundamental approach of setting high-level principles where firms should use their judgement to determine what is appropriate in the circumstances, having regard to the nature of their products and customers, and with an emphasis on proportionality.

We consider that these changes provide a helpful framework for considering the extent and scope of assessments, including the volume and content of information that may need to be taken into account and the degree of verification that may be needed in the particular case.

Factors informing the proportionality of assessments

We recognise the concerns raised by some industry respondents about the factors determining proportionality. In light of this, we have clarified that the factors listed may pull in different directions when informing the level of affordability risk. It is for firms to assess how they apply in their own case.

We were not proposing that default charges should be taken into account directly in the assessment of affordability, and we agree with respondents that the assumption should be made that both parties adhere to the terms of the agreement. However, they are a potential risk to the customer, and so should be taken into account in assessing what type and extent of creditworthiness assessment may be required in the circumstances.

We have clarified that the firm may, where appropriate, have regard to the intended purpose of the credit. We do not expect firms to establish this, unless it is clearly material to affordability risk, but where the purpose is known, it may be relevant to the assessment. However, firms must still satisfy themselves in relation to affordability risk in the particular case.

We have expanded the reference to financial difficulties to include not only situations where the customer is in, or has recently experienced, such difficulties, but also where there is information suggesting that they are likely to experience financial difficulties in the future. For example, this could be because of evidence of a high level of existing indebtedness.

Business lending

We recognise the concerns raised by industry respondents in relation to business lending. However, we think our principles-based approach, rooted in proportionality, allows sufficient flexibility for firms to tailor the assessment and to have a different approach for business lending than consumer lending. We do not consider it necessary to have a separate set of rules for business lending and in some cases the risks to the borrower may be very similar to those facing a consumer looking to borrow money. This may be particularly the case for sole traders where business and personal finances may be inter-twined.

However, we have clarified that it may be reasonable to take into account the different circumstances that may surround a customer borrowing for business purposes, and the nature and resources of the business. We also recognise that income and expenditure may fluctuate more in the case of a business borrower.

Lending thresholds
We acknowledge the concerns raised by some consumer organisations that the changes do not go far enough in setting thresholds against which firms should base their assessments. However, we think that such an approach would be unduly prescriptive and could lead to unintended consequences, given the breadth and diversity of the consumer credit market. It could also have a significant impact on the cost and availability of credit. We set out in CP17/27 our reasons for not requiring such thresholds, and the CP responses have provided no evidence to cause us to change our opinion in this respect.

Open-end and running-account credit

2.41 We proposed to clarify that for open-end credit, such as a credit card, firms should make a reasonable assumption about how long the credit is likely to be for.

2.42 For running-account credit, we proposed that firms should assess affordability by reference to a number of assumptions. In particular, the firm should assume full drawdown of the credit limit on day one and repayment by equal instalments over a reasonable period. However, we also proposed that firms should make additional assumptions about likely further drawdowns and repayments, both during the assumed duration of the initial drawdown and subsequently.

2.43 Many industry respondents expressed concerns that requiring assumptions about likely further drawdowns and repayments would create unnecessary complexity and deliver little benefit. It should be sufficient to take a 'worst case' scenario of full drawdown and repayment over a period, which broadly corresponds to the mechanism for calculating the annual percentage rate of charge (APR). On the other hand, some industry respondents argued that a 'worst case' scenario was inappropriate for some types of running-account credit, particularly where the borrower was a returning customer or the firm had ample information about them.

2.44 There was also a concern that, even if full drawdown might be a reasonable assumption when taking out credit for the first time, it was artificial and unreasonable in the case of credit limit increases, where the customer had established a pattern of drawdown and repayment. Firms should have flexibility to determine reasonable assumptions in their own circumstances.

2.45 Some respondents questioned the requirement to assess the period of drawdown by reference to the period of repayment for a fixed-sum loan for an equivalent amount. They argued that some firms might not have access to this information, or might assume different periods, which could distort competition in the market.

2.46 Some consumer organisations suggested that firms should be required to assess affordability on an ongoing basis, with periodic updates. They suggested these should not be limited to a significant increase in the amount of credit or the credit limit. They also argued that guidance should be provided on what would constitute a reasonable period for assessing repayments.

2.47 There were mixed views expressed as to whether persistent debt issues in credit cards could or should be addressed by changes to creditworthiness rules.

2.48 In CP17/27 we asked:

> **Q5:** ***Do you agree with our proposals for open-end and running-account credit?***

Our response

There was broad support for the proposal that, for open-end credit, firms should make a reasonable assumption about how long the credit is likely to be for. We are therefore proceeding with this change.

We recognise that, in doing so, we are converting existing guidance into rules. However, as noted in CP17/27, our expectation is that firms already treat the guidance on this, and on running-account credit, as though they were rules.

Assumptions for running-account credit
We believe that it is a reasonable basis for an assessment that the customer draws down the entire credit limit at the earliest opportunity and repays by equal instalments over a reasonable period, and this is in line with our existing rules and guidance. We recognise that it is very unlikely to correspond to how a customer will use the product in practice, but, as noted, it provides a type of 'worst case' scenario, to minimise affordability risk.

A firm may have reason to believe that the customer will draw down only part of the credit limit, and use the facility only to a limited extent. However, there is no guarantee of this, and it is of the essence of most running-account credit that the customer is free to draw down at any time, up to the available credit limit. The firm needs to be satisfied that, if the customer does so, they can afford to repay comfortably and without undue difficulties.

We also note that the assumption of repayment by equal instalments assumes no further drawdowns over that period. In practice, a customer may draw down further credit, once a repayment has refreshed the available credit. Some may choose to remain maxed out for the duration.

While firms should, in considering what is a reasonable period for repayment, have regard to the typical period of repayment of a fixed-sum loan for an equivalent credit amount, we are not requiring this to be the basis used. It is open to firms to make alternative assumptions regarding the length of the period of repayment, where these are reasonable in the circumstances.

We have amended the guidance to clarify this. For example, if the minimum repayment under the agreement is set at a relatively high level, an assumed drawdown of the credit limit may be repaid more quickly (under the terms of the agreement) than might be the case for a fixed-sum loan.

We acknowledge the concerns expressed about the proposed requirement to make additional assumptions, about likely further drawdowns and repayments, and that this could create unnecessary complexity. However, a firm should not ignore evidence suggesting, in the particular case, that there are additional affordability risks, and so additional assumptions may be needed regarding drawdowns and repayments. We have clarified this, and that any additional assumptions should be reasonable in the circumstances.

Monitoring repayments and persistent debt
The Consumer Credit Directive precludes a requirement on firms to re-assess creditworthiness or affordability periodically, where there is no increase in the credit limit, or this is not significant. However, CONC 6.7 requires all lenders to monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

We have modified this requirement in the case of credit cards, as part of a package of remedies following our Credit Card Market Study.[8] We call this 'earlier intervention', with the aim of addressing payment difficulties before they lead to arrears or persistent debt. We have also recently proposed similar remedies in relation to store cards and catalogue credit.[9]

We recognise the concerns that have been expressed around persistent debt in credit cards. We recently published[10] the outcome of a programme of behavioural research to test different ways of presenting repayment options to credit card customers and find ways of encouraging customers making low repayments to repay more when they can afford it. The research builds on academic studies which have shown that consumers' choice of repayment amount can be disproportionately influenced by the contractual minimum repayment (an effect known as 'anchoring').

As a result of the effects we observed during our testing, we are considering consulting on changing our rules and guidance to mandate the removal of a statement of the minimum repayment amount (de-anchoring). Such a measure may have the potential to increase customers' credit card repayments where they can afford to do so, whilst preserving the flexibility of credit cards which millions of consumers value. We plan to engage with relevant stakeholders in the coming months about our research findings and the practicalities of implementing such an intervention.

8 www.fca.org.uk/publications/market-studies/credit-card-market-study
9 www.fca.org.uk/publication/consultation/cp18-12.pdf
10 www.fca.org.uk/publication/research/research-note-helping-credit-card-users-repay-their-debt-summary-experimental-research.pdf

Guarantor loans

2.49 We proposed that, in relation to guarantor loans, as well as assessing the borrower's creditworthiness, firms should be required to consider the potential for the commitments in respect of the credit agreement to have a significant negative effect on the guarantor's financial situation.

2.50 As with the existing CONC provisions, we proposed that this assessment need not be identical to that undertaken in relation to the borrower, but should be sufficiently detailed taking into account the potential obligations that might fall on the guarantor.

2.51 Respondents were broadly supportive of our proposals. However, some consumer organisations expressed wider concerns about the nature of guarantor lending, including potential risks for vulnerable consumers. They suggested, in particular, that guarantors are not always fully aware of their liabilities.

2.52 In CP17/27 we asked:

Q6: ***Do you agree with our proposals for guarantor loans?***

Our response

In view of the broad support expressed, we are proceeding with our consultation proposals. We think these will provide clarity for firms on the factors to take into account when assessing potential impacts on the guarantor arising from the risk of non-payment by the borrower.

We are also clear that firms should not assess the creditworthiness of the borrower by reference to the security provided by the guarantor.

In relation to the wider concerns, we have done extensive work through our authorisations assessments and through supervision to raise standards in the guarantor loans market. This has included working closely with individual firms on a case-by-case basis where we have identified detriment. Where we have found evidence of wider harm, we have taken action to address conduct across the sector.

For example, to ensure that guarantors are treated appropriately by lenders, we issued guidance in January 2017 which clarified our view on the enforcement of guarantees and the need for a default notice under the CCA.[11] We also made rules making clear that a guarantor is a 'customer' for the purposes of our high-level principles and rules, and, for example, should be given an adequate pre-contractual explanation.[12]

We consider that this work has raised standards, although we recognise that this is a relatively new market which is growing rapidly. We are therefore planning to include guarantor lending in our

11 www.fca.org.uk/publication/finalised-guidance/fg17-01.pdf
12 www.fca.org.uk/publication/policy/ps15-23.pdf

supervisory assessment of high-cost credit markets later in the year, and we will not hesitate to bring forward proposals to address any harm that we find.

Peer-to-peer lending

2.53 We proposed making corresponding changes to the requirements for peer-to-peer (P2P) platforms to assess creditworthiness, including affordability, in relation to a borrower under a P2P agreement. This may or may not be a regulated credit agreement.

2.54 Our rules in relation to P2P platforms broadly parallel those for lenders. In addition, where a P2P investor is lending by way of business, it will be under a separate obligation to assess creditworthiness under our rules, subject to certain exceptions.

2.55 As noted in CP17/27, it is open to a P2P lender (acting by way of business) to outsource all or part of the creditworthiness assessment to the P2P platform, although it remains ultimately responsible for ensuring compliance with its regulatory obligations, including under CONC. In principle, it would also be open to a P2P platform to outsource all or part of an assessment to the lender.

2.56 We proposed to extend the creditworthiness requirements to include a significant increase in the amount of credit or the credit limit under a P2P agreement, to address an anomaly in the current regime.

2.57 Respondents were broadly supportive of our proposals, and welcomed the extension of the creditworthiness requirements to credit limit increases under P2P agreements. Respondents argued that credit provided through P2P agreements should be subject to the same creditworthiness requirements as other types of credit.

2.58 In CP17/27 we asked:

Q7: ***Do you agree with our proposals for peer-to-peer loans?***

Our response

We agree that borrowers should be afforded the same protection when provided with credit under a P2P agreement as with other types of credit. In view of the broad support for our proposals, we are therefore proceeding with these changes.

While we recognise that setting out the requirements on P2P platforms separately in our rules has increased their length, we consider that this provides more clarity for the P2P sector and will be easier for firms to follow, facilitating compliance.

We have also recently published our review[13] of the crowdfunding sector which proposes measures to strengthen investor protection.

Policies and procedures

2.59 We proposed to clarify that firms' policies and procedures should be in writing, and should set out the principal factors to be taken into account in assessing creditworthiness, including affordability. We also proposed that firms should periodically review the effectiveness of their policies and procedures, making changes where necessary, and should maintain a record of transactions sufficient to demonstrate that an assessment was carried out in accordance with our rules.

2.60 In addition, we proposed that firms (excluding sole traders) should establish, implement and maintain robust governance and internal control mechanisms.

2.61 Most respondents agreed with our proposals on policies and procedures, and recognised the importance of appropriate governance and internal control mechanisms. Some industry stakeholders raised concerns about the extent to which a record of all individual lending decisions would be required, and whether such records could be stored electronically.

2.62 In CP17/27 we asked:

Q8: ***Do you have any views on our proposals in relation to firms' policies and procedures for creditworthiness assessment?***

Our response

We consider that our proposals are helpful to firms by building on existing SYSC requirements and setting these out in the context of consumer credit. As such, and in view of the broad support expressed by respondents, we are proceeding with the changes we proposed.

We expect firms to maintain a record of each transaction where a regulated credit agreement is entered into or there is a significant increase in the amount of credit or the credit limit. The record should be sufficient to enable the FCA to monitor the firm's compliance with its obligations under CONC.

We are not requiring firms to keep a record in cases where an application is declined, but we recognise that some firms may wish to do so, so they can evaluate the effectiveness of their policies and procedures.

We have clarified that records can be kept either on paper or in electronic form. In the latter case, in line with SYSC, the firm should be able to provide a paper reproduction of the record upon request.

13 www.fca.org.uk/publication/consultation/cp18-20.pdf

Accessing and using data

2.63 We highlighted a number of issues around the use of credit information including the role played by CRAs in the provision of data, products and other analytics to inform lenders' creditworthiness assessments. These issues were also discussed in detail in OP 28.[14] We invited views on these issues, including the extent to which proposed new developments or data sources could help firms in their assessments.

2.64 We received many extensive responses on these issues, expressing a wide range of views on the way in which credit information is currently shared. Responses focused on issues relating to access, coverage and timeliness of information reported to CRAs, and suggested a number of ways in which these might be improved. Some respondents argued that the current rules[15] on the sharing of this information put non-bank lenders at an unfair disadvantage.

2.65 Many respondents also suggested new information sources that might be shared to improve lenders' visibility on customers' income and expenditure, including HMRC tax data, council tax and rental payment information. While most respondents recognised the potential benefits of new developments such as Open Banking, some reservations were expressed around the extent to which consumers would be willing to engage with these products and the likely timescales for this.

2.66 In CP17/27 we asked:

> **Q9:** ***Do you have any views on the use of CRA data and products, or other data sources, as part of an assessment?***

Our response

We recognise the significant role played by credit information in lenders' assessments of creditworthiness, including affordability, and are grateful for the useful information provided by respondents on all these issues.

We consider that consumers may experience harm if this information is not shared effectively, or is not of good quality, or if there are significant gaps. We have therefore announced in our Business Plan for 2018/19 our intention to undertake a market study in this area to gain a better understanding of the potential for harm and, if necessary, to identify remedies.[16]

We will use the responses to this consultation to inform the scope of this work, which we anticipate will commence in early 2019.

14 www.fca.org.uk/publication/occasional-papers/op17-28.pdf
15 These rules are contained in the 'Principles of Reciprocity': www.scoronline.co.uk/principles
16 Business Plan 2018/19 – www.fca.org.uk/publication/business-plans/business-plan-2018-19.pdf

Other points

2.67 Respondents also raised a wide range of related issues, often recognising that they could not necessarily be directly addressed through changes to our creditworthiness rules. In particular, consumer organisations raised concerns about levels of household indebtedness, and some cited particular high-cost credit products as areas where there are particular risks to vulnerable consumers.

2.68 Some industry respondents raised concerns about the application of creditworthiness rules in particular sectors, including motor finance and insurance premium finance.

2.69 Most respondents, including firms and trade bodies, broadly recognised that there is a balance to be struck between providing firms with sufficient clarity on our expectations whilst affording them sufficient discretion to decide what type of assessment is appropriate in the particular circumstances.

2.70 In CP17/27 we asked:

Q10: ***Do you have any other comments on our proposed changes to CONC in relation to creditworthiness including affordability?***

Our response

In developing our proposals, we have liaised with the Bank of England, including the Prudential Regulation Authority (PRA), and have taken account of the findings of the Financial Policy Committee (FPC) in relation to household indebtedness.

The FPC's primary responsibility is to identify, monitor and take action to remove or reduce systemic risks, whereas our conduct rules are primarily concerned with ensuring responsible lending at the customer level.

We have taken a wide range of actions in high-cost credit markets to mitigate risks to consumers. While we recognise the concerns expressed by respondents, we consider that many of these issues are specific to particular sectors or products, and are more effectively addressed through targeted work in those areas. Following our significant work on high-cost credit, we have published a consultation proposing rules and guidance in a number of areas to address harm.[17]

We agree that there is a balance to be struck in terms of providing firms with clarity on our expectations whilst affording them sufficient discretion to decide what type of assessment is appropriate in the circumstances.

We have undertaken work in the motor finance sector to assess potential risks to customers.[18] As part of this, we have considered how firms currently assess creditworthiness, including affordability, including

17 www.fca.org.uk/publication/consultation/cp18-12.pdf
18 www.fca.org.uk/publication/research/our-work-on-motor-finance.pdf

what information they typically take into account and how this is factored into an assessment.

We expect to publish the outcome of this work later this year. Any issues specific to this sector will be considered in light of those findings.

In relation to insurance premium finance, we have recently written to firms operating in this sector setting out our expectations. These include insurers, brokers and specialist finance providers.

We will also engage in other sector-specific work where appropriate.

Cost benefit analysis

2.71 We set out in the CP that we aimed to explain our regulatory expectations and facilitate compliance by providing more detail on the existing requirements, including what they mean for firms undertaking creditworthiness assessments. We focussed in particular on firms' policies and procedures, in light of relevant SYSC rules.

2.72 We indicated that, where a firm is not currently conducting adequate assessments of creditworthiness, including affordability, it may need to make changes. However, the appropriate baseline for a CBA of any new rules is compliance with the current rules. We can therefore disregard any costs for CBA purposes where any changes merely bring the firm into compliance with the current regulatory regime.

2.73 Where a firm previously had procedures that were unnecessary or disproportionate, because they misunderstood our requirements, they may be able to implement changes to reduce some processes, and this may benefit firms and customers, provided that affordability assessment remains adequate.

2.74 We concluded that any increase in costs for firms would be limited to those needed to bring the firm into compliance with the current regulatory regime, or of only minimal significance, so no CBA was needed.

2.75 Many industry respondents raised concerns about the proposal to exclude household income from being taken into account in creditworthiness assessments. They indicated that this would require significant changes to firms' processes that could lead to an increase in costs of more than minimal significance.

2.76 Some industry respondents also raised concerns about the proposals for running-account credit and indicated that these would impact significantly on costs.

2.77 Subject to these points, there was broad agreement that the proposals would otherwise be unlikely to have a significant impact on costs to firms.

2.78 The instrument published in the Appendix to this policy statement does not differ from the instrument published for consultation in CP17/27 in a way which is, in our view, significant.

2.79 In CP17/27 we asked:

Q11: ***Do you agree with our assessment of the costs and benefits of the proposed changes?***

Our response

We recognise the concerns that have been expressed around the exclusion of household income from assessments and the proposals for running-account credit. As indicated in our responses to Q2 and Q5, we have amended our proposals to address these concerns.

In view of this, and the CP responses, we are satisfied that our assessment that any increase in costs will be of minimal significance remains valid.

Since our consultation, we have begun to estimate the costs to firms of familiarisation and gap analysis of changes to our requirements. We are required to publish an Impact Assessment under the Enterprise Act,[19] on the basis that these are qualifying provisions. We expect to publish this on our website later this year.

Compatibility statement

2.80 We considered the equality and diversity issues that may arise from our proposals, and set out that we did not consider that they would adversely impact any of the groups with protected characteristics under the Equality Act 2010.

2.81 Many respondents to the consultation raised concerns about the impact of the proposal to only allow individual, as opposed to household, income to be taken into account in assessments. Respondents were concerned that this could have an adverse impact on certain groups and increase financial exclusion.

2.82 In CP17/27 we asked:

Q12: ***Do you have any comments on the equality and diversity implications or other aspects of our proposals?***

Our response

We have considered the equality and diversity issues that may arise as a result of our new rules and guidance, and have taken account of consultation responses. As noted in our response to Q2, we have amended our original proposals to allow household income to be taken into account in creditworthiness assessments, where appropriate.

19 Relevant reporting requirements are contained in the Small Business, Enterprise and Employment Act 2015 as amended by the Enterprise Act 2016.

Overall, we do not consider that the changes adversely impact any of the groups with protected characteristics under the Equality Act 2010. We will, however, take account of any equality and diversity implications as part of monitoring the impact of the new rules and guidance.

3 Common misconceptions and proportionality

3.1 We published a 'common misunderstandings' document[20] in June 2015, to address some misconceptions among firms as to what our CONC rules and guidance on creditworthiness and affordability meant. This will cease to apply once the new rules and guidance in this policy statement come fully into force.

3.2 We will consider whether to issue a replacement document once the new provisions have had chance to bed in. In the meantime, we list below some answers to points raised by stakeholders in response to CP17/27.

1. **Assessing credit risk is enough to satisfy affordability**
   Most firms have a strong commercial incentive to assess credit risk (the probability of default). Affordability risk, on the other hand, is concerned with the risk of the customer being unable to make repayments without this having an adverse effect on their financial situation. Both credit risk and affordability are elements of creditworthiness, but they are different things: credit risk is concerned with risk to the lender and affordability risk with risk to the borrower.

   Accordingly, a credit risk assessment on its own will be insufficient to comply with our creditworthiness rules. There must be an adequate assessment of affordability.

2. **I always have to take account of income in the assessment**
   Not necessarily. In some (limited) cases it may be obvious that the credit is affordable, without establishing the borrower's income or disposable income (ie income less non-discretionary expenditure).

   For example, this may be clear on the basis of other information about the borrower, such as through previous dealings or information from a CRA. In some cases it may be clear from the applicant's employment, which may imply a minimum level of income. However, the onus would be on the firm, if challenged, to demonstrate that it was reasonable to assume affordability was obvious in the circumstances.

3. **I have to confirm how much the borrower earns**
   Not necessarily. Where the firm is required to take income into account, it may be sufficient to rely on an estimate, for example a minimum amount or a range. However, the firm would need to be able to demonstrate that the assumptions underlying this are reasonable in the circumstances. It would also need to decide whether and to what extent to verify the information.

4. **I can also take account of other household income**
   This depends. Account may be taken of the income of other individuals within the household, or with whom the borrower has shared finances (for example a

20 www.fca.org.uk/firms/creditworthiness-and-affordability-common-misunderstandings

joint current account), provided that the firm is reasonably satisfied that this will be available to the borrower for repayment of the credit.

5. **I have to undertake a detailed income and expenditure assessment**
Not necessarily. Where income has to be taken into account (as above), it may be sufficient to estimate income, rather than determining an exact amount.

Where the firm is required to take into account non-discretionary expenditure, it may estimate this. It may also take into account statistical data unless it knows or has reasonable cause to suspect that the customer's non-discretionary expenditure is significantly higher than that described in the data, or that the data are unlikely to be reasonably representative of the customer's situation.

6. **I have to forecast all possible changes in income and expenditure**
No. Where income or disposable income have to be taken into account, the firm must also consider likely reductions in income (or increases in non-discretionary expenditure) to the extent reasonably foreseeable, where these could have a material impact on affordability risk.

7. **A light touch assessment is all that is needed for mainstream lending to prime borrowers**
Not necessarily – it all depends on individual circumstances. For instance, a borrower may be 'prime' but may have significant existing indebtedness or non-discretionary expenditure, or their situation may be likely to change over the period of the credit. And a loan book may be predominantly mainstream, but some products may have much higher costs or the risks to the borrower from non-payment may be significantly higher.

The firm should decide what is reasonable and proportionate in the circumstances.

8. **A full income and expenditure assessment is needed for lending to non-prime borrowers**
Not necessarily – it all depends on individual circumstances. A borrower may be 'non-prime' but may comfortably be able to afford the particular credit commitment, given the amount and duration of the credit. Relevant factors, when considering proportionality, include the cost of the credit, in absolute terms and relative to the borrower's financial situation. Also relevant may be default charges and other adverse consequences if the borrower misses repayments or under-pays.

As above, the firm should consider what is reasonable and proportionate.

9. **Proportionality can be judged on a product basis across the board**
No. In designing policies and procedures that take into account proportionality, the firm should take account of the affordability risks to borrowers in the target market. These are likely to depend both upon the nature and risks of the credit product and also the characteristics of the customer and their likely ability to repay.

Where risks are higher, a more rigorous assessment is likely to be needed.

10. The FCA's approach undermines the use of automated systems
No. What matters is whether the firm is carrying out a proper creditworthiness assessment. It is immaterial whether it is manual or automated, or a combination of the two, and whether it is sequential or integrated. However, a firm operating automated systems needs to understand what these involve and to assess and mitigate any potential risks, to avoid systemic problems. The same applies if a firm makes extensive use of data or products from CRAs or other third parties – it needs to understand the risks and limitations of such data or evidence when assessing whether the information is sufficient to carry out a reasonable creditworthiness assessment.

11. FCA rules dictate how assessments must be made
No. Our rules are mainly principles-based, rather than prescriptive, and focus on proportionality. The extent and scope of an assessment should depend on, and be proportionate to, key relevant factors including the type, amount and cost of the credit and the risks to the borrower.

CONC sets out broad parameters but within these firms have considerable flexibility to decide how to assess affordability, provided they can justify this if challenged. Creditworthiness assessment is not an exact science, and some credit will turn out to be unaffordable due to unforeseeable events and circumstances even if the initial assessment was appropriate and rigorous.

12. It is better to over-comply than under-comply
Yes. A firm must not under-comply and, if it does so, it may be liable to supervisory or enforcement action. We are keen, however, to help firms avoid over-compliance that might arise because they are unclear about the practical effect of our rules.

If a firm over-complies, that is principally a matter for it, although one consequence may be that applicants are refused credit in circumstances where they may have received this had the firm carried out a proportionate creditworthiness assessment. Over-compliance may also increase the firm's operating costs and hence prices.

Proportionality

3.3 We have also developed a range of examples which are intended to illustrate how proportionality may affect a firm's policies and procedures for assessing creditworthiness, including affordability. These should not be taken to imply a view as to minimum standards or process. As noted in CP17/27, there may be multiple ways in which a firm can comply with our rules, and we do not wish to discourage automation or innovation. Our rules are neutral in terms of delivery channel.

3.4 Firms may have different approaches to assessing credit risk. This may depend upon their commercial risk appetite and other business considerations. However, we assume in the examples below that the processes have been chosen *solely* to ensure compliance with FCA rules on assessing creditworthiness including affordability.

3.5 For the purpose of these examples, a 'prime' customer is assumed to be one with a good credit history and no financial difficulties.

Table 3.1: Example illustrating a tailored process

Scenario 1	
Firm offering personal loans managing risks on a proportionate basis	
Firm A offers a range of personal loans to a wide range of consumers, both prime and non-prime, through an online portal. They range from small short-term loans to much larger amounts over longer periods. Prices vary according to the amount of credit and the credit risk presented by the customer, with non-prime customers borrowing small amounts paying higher interest rates and APRs. Default fees are also charged, and may vary by product.	
Firm process	***FCA observations***
Firm A applies a tailored process reflecting the nature of the product and customer. This involves asking all applicants about their employment and current income, and whether changes are expected. The firm also undertakes a CRA check including credit score and adverse credit history. It also incorporates Office for National Statistics (ONS) data. Where it is obvious, based on this, that the credit will be affordable in the individual case, no further checks are made. In some cases, additional information or documentation is requested from the applicant and/or additional CRA checks are made. This could be upfront, on the basis of the firm's analysis of risks in relation to the specific product and target customer base, or if the initial assessment shows that further information is needed. Where the applicant cannot provide relevant documentation, alternative documentation may be requested or alternative checks made. Marginal cases may be referred to an underwriter for manual assessment, or the applicant may be offered a smaller amount of credit.	On the face of it, policies and procedures appear to have proportionality built into them. The firm may be able to demonstrate that they are clear and effective, and deliver a reasonable creditworthiness assessment in each case. The assessment is adjusted according to the risks in the individual case, based on the type of credit, the amount and cost of the credit and the borrower's circumstances. The firm may base its assessment primarily on information or documentation provided by the applicant, with only a limited CRA check. Alternatively, it may request less information from the applicant (and no supporting documents other than in marginal cases) but make greater use of CRA data and products and/or information from other third parties. Where a firm relies heavily on CRA or other third-party data, it needs to be able to demonstrate that it understands the risks and limitations of such data and has factored these appropriately into its policies and procedures.

Table 3.2: Example illustrating a predominately automated process

<table>
<tr><td colspan="2"> Scenario 2 Firm offering credit to purchase goods or services
(e.g. retail, premium finance) managing risks on a proportionate basis Firm B offers credit to a wide range of consumers, both prime and non-prime, to finance the purchase of goods or services. The credit is offered at point-of-sale by intermediaries, who gather information on the lender's behalf to enable an assessment of creditworthiness. The intermediary may also provide a view on this to the lender. The credit is repayable over a period by instalments, and both the amount of credit and the cost of the credit vary according to the purchase value and the customer's circumstances. Default charges are low or minimal. </td></tr>
<tr><td>Firm process</td><td>FCA observations</td></tr>
<tr><td> Firm B operates a largely automated process through a range of intermediaries. This involves asking all applicants for personal information and employment status. The firm also makes a CRA check including credit score and indebtedness indicators. It also incorporates ONS data to model expenditure. Where it is obvious, based on this, that the credit will be affordable in the individual case, no further checks are made. In some cases, additional information is requested from the applicant including income and expenditure information. This is either upfront, on the basis of the firm's analysis of risks in relation to the specific product and target customer base, or where the initial assessment shows that further information is needed. The firm operates strong controls to monitor the elements of the prcocess operated by intermediaries. </td><td> On the face of it, the policies and procedures may be reasonable and proportionate in light of the risks to the customer. However, the firm would need to be able to demonstrate that it is adequately factoring in all the risks (product and customer) in each case. It may, for example, be obvious in the circumstances that the credit is affordable without establishing or estimating income, as the firm may in some cases be satisfied on this by virtue of employment status, good credit history and low indebtedness. The assessment is largely automated, but is adjusted according to the risks in the individual case, based on the type of credit, the amount and cost of the credit and the borrower's circumstances. Where a firm relies heavily on CRA or other third-party data, it needs to be able to demonstrate that it understands the risks and limitations of such data and has factored these appropriately into its policies and procedures. Where a firm outsources aspects of its functions, it remains responsible for ensuring compliance with regulatory obligations. Further details are set out in our Handbook under SYSC 8. </td></tr>
</table>

Table 3.3: Example illustrating a common process

Scenario 3 ***Firm offering personal loans where processes may be disproportionate*** Firm C offers a range of personal loans to a wide range of consumers, both prime and non-prime. They range from small short-term loans to much larger amounts over longer periods, primarily through a branch network. Prices vary according to the amount of credit and the credit risk presented by the customer, with non-prime customers borrowing small amounts paying higher interest rates and APRs. Default fees are also charged, and may vary by product.	
Firm process	***FCA observations***
Firm C applies a common process to all applicants. This involves asking all applicants about their employment and current income and non-discretionary expenditure, and whether changes are expected. The firm requests the applicant's last three payslips and bank statements. The firm also makes a CRA check including credit score, adverse credit history and indebtedness, plus income indicators. It also incorporates ONS and other third-party data. The firm applies this to all applicants, on the basis that some applicants may require a more rigorous assessment, for example because they are non-prime or are applying for products which are inherently more costly or risky. If an applicant is not in employment, or cannot provide recent payslips and bank statements, or has a 'thin' CRA file, the firm will not lend.	The firm is choosing to comply with CONC by determining the amount of the applicant's current income and non-discretionary expenditure in all cases. It uses a combination of manual and automated processes. On the face of it, the firm's processes appear to be compliant with CONC, although there may be individual cases where a more rigorous assessment is required. However, they do not appear to reflect proportionality, as the same processes are applied to all applicants and all products within the range. In some cases, affordability may be obvious without having to establish or estimate income. Where income is established or estimated, it may be obvious that non-discretionary expenditure is unlikely to impact materially on affordability risk, or an estimate can be used, based on statistical data or modelling. In principle, it would be open to the firm to modify its processes according to the costs and risks in the individual case. For example, a less rigorous assessment may be justified for small loans to prime customers where the cost of the credit is low (in absolute terms and relative to the borrower's financial situation) and the risks to the borrower arising from non-payment are also low.

Table 3.4: Example illustrating a predominately common process

Scenario 4 ***Firm offering personal loans where processes are unlikely to effectively manage risks*** Firm D offers a range of personal loans to consumers who are predominately non-prime through an online portal. They range from small short-term loans to some larger amounts over longer periods. Some loans are secured by guarantee. Prices vary according to the amount of credit and the credit risk presented by the customer. Default fees are also charged.	
Firm process	***FCA observations***
Firm D applies a common process to all applicants. This involves asking all applicants about their individual and household income, and making a CRA check including credit score and adverse credit history. The firm applies this to all applicants, on the basis of its assessment of the typical customer for its products and the typical costs and risks that may arise. Where the applicant (or guarantor) appears to be prime, based on the CRA check, no further information is obtained. Otherwise the firm uses a CRA to establish indebtedness, to decide whether to lend. In marginal cases it may request a recent payslip, but this can be any payslip within the last 6 months.	The firm's policies and procedures are unlikely to enable it to carry out a reasonable creditworthiness assessment for all customers. In some cases affordability may be obvious, based on the information provided and/or the CRA check made, and nothing more may be needed. However, this is unlikely to be the case for all products and all applicants. For example, affordability risk is likely to be higher where a non-prime customer has significant indebtedness or financial difficulties. It may also be higher for some products than others. The firm may be overly relying on self-declared income, without obtaining independent evidence where appropriate. There may be reliance on household income, which may not be available for repayment of the credit, or on the existence of a guarantor. An applicant may not appear to be non-prime but this could be because they have a 'thin' credit file or one that does not record all significant commitments. The firm is not taking into account non-discretionary expenditure which may have a material impact on affordability risk. Having regard to proportionality, the firm may need to undertake more rigorous checks in some cases. This could, for example, involve requesting additional information from the applicant, or obtaining documentary evidence, or making additional CRA checks, or some combination of these.

Annex 1
List of non-confidential respondents

American Express

Amigo Loans

APPG on Alternative Lending

AXA Group

British Retail Consortium

British Vehicle Rental and Leasing Association

CallCredit

Christians Against Poverty

Capital Credit Union

Capital One

Consumer Credit Trade Association

Consumer Finance Association

Chartered Institute of Credit Management

Citizens Advice

CURO Transatlantic

Direct Line Group

Elevate Credit Ltd

Experian

Finance and Leasing Association

Financial Services Consumer Panel

HSBC

Instant Working Capital

James Miller/JJJ Couriers Ltd

Legal & General

Lend & Borrow Trust Co Ltd

Lending Standards Board

Loans 2 Go Ltd

Money Advice Service

Money Advice Trust

Mutual Clothing & Supply Co Ltd

Nationwide

National Pawnbrokers Association

Premium Credit Ltd

Responsible Finance

SA Compliance Management

Scottish Police Credit Union

Shop Direct Finance Co Ltd

StepChange

The Big Issue Group

The Money Charity

TotallyMoney Ltd

UK Finance

Vanquis

Virgin Money

Which

Annex 2
Abbreviations used in this paper

APR	Annual percentage rate of charge
Bank	Bank of England
CBA	Cost benefit analysis
CCA	Consumer Credit Act 1974
CCD	Consumer Credit Directive (2008/48/EC)
CONC	Consumer Credit sourcebook
CP	Consultation paper
CRA	Credit reference agency
DTI	Debt-to-income ratio
FCA	Financial Conduct Authority
FPC	Financial Policy Committee
FSMA	Financial Services and Markets Act 2000
ONS	Office for National Statistics
OP	Occasional Paper
P2P	Peer-to-peer
PRA	Prudential Regulation Authority
PS	Policy statement
SM&CR	Senior Managers & Certification Regime
SYSC	Senior Management Arrangements, Systems and Controls sourcebook

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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Appendix 1
Made rules (legal instrument)

CONSUMER CREDIT (CREDITWORTHINESS) INSTRUMENT 2018

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (The FCA's general rules);
(2) section 137T (General supplementary powers); and
(3) section 139A (Power of the FCA to give guidance).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 November 2018.

Amendments to the Handbook

D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex B to this instrument.

Notes

F. In Annex B to this instrument, the notes (indicated by "**Note**:") are included for the convenience of readers but do not form part of the legislative text.

Citation

G. This instrument may be cited as the Consumer Credit (Creditworthiness) Instrument 2018.

By order of the Board
26 July 2018

Annex A

Amendments to the Glossary

In this Annex, underlining indicates new text and striking through indicates deleted text.

credit-worthiness assessment	the assessment~~, including as to the affordability of credit by the customer,~~ required by *CONC* ~~5.2.1R~~ 5.2A.4R or *CONC* 5.5A.5R.
priority debt	(in *BCOBS*, *CONC* 5.2A and *CONC* 5.5A) an obligation on the part of a *consumer* to make a payment: (a) …
sustainable	(in *CONC*) ~~has the meaning given in *CONC* 5.3.1G~~ the ability of the *customer* to make repayments under a *credit agreement* in accordance with *CONC* 5.2A.12R.
unsustainable	(in *CONC*) ~~has the meaning given in *CONC* 5.3.1G~~ the inability of the *customer* to make repayments under a *credit agreement* in accordance with *CONC* 5.2A.12R (or, in the case of a *borrower* under a *P2P agreement*, in accordance with *CONC* 5.5A.13R).

Annex B

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex underlining indicates new text and striking through indicates deleted text, unless indicated otherwise.

2 Conduct of business standards: general

…

2.10 Mental capacity guidance

…

Sustainability of borrowing

2.10.18 G Where a *firm* understands, or reasonably suspects, a *customer* has or may have a mental capacity limitation it should apply a high level of scrutiny to the *customer's* application for *credit*, in order to mitigate the risk of the *customer* entering into *unsustainable* borrowing ~~(see *CONC* 5.2 and *CONC* 5.3)~~.

…

2.10.19 G …

(2) Where a *firm* understands or reasonably suspects a *customer* has or may have a mental capacity limitation, it should undertake an appropriate and effective *creditworthiness assessment* ~~or assessment required by *CONC* 5.2.2R(1)~~ (see *CONC* 5.2A) and it would be appropriate not to place over-reliance on information provided by the *customer* for the assessment.

…

…

3 Financial promotions and communications with customers

…

3.8 Financial promotions and communications: lenders

…

Unfair business practices

3.8.2 R A *firm* must not in a *financial promotion* or a communication with a *customer*:

(1) provide an application for *credit* with a pre-completed amount of credit which is not based on having carried out a *creditworthiness assessment* ~~or an assessment required by *CONC* 5.2.2R(1)~~ (see *CONC* 5.2A); or

[**Note**: paragraph 5.3 of *ILG*]

…

…

4 Pre-contractual requirements

…

4.2 Pre-contract disclosure and adequate explanations

…

Pre-contractual adequate explanations

4.2.5 R …

(8) ~~Where this *rule* applies to a *borrower-lender agreement* to finance the making of payments arising on or connected with the death of a person, the payments in question are set out in (9).~~

~~[**Note**: section 74(1F) of CCA]~~ [deleted]

(9) ~~The payments referred to in (8) are:~~

~~(a) inheritance tax chargeable in the *UK* on the death of any person;~~

~~(b) fees payable to a court:~~

~~(i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;~~

~~(ii) in Scotland, in connection with a grant of confirmation; and~~

~~(iii) in the *UK*, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and~~

~~(c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.~~

~~[**Note**: regulation 2 of SI 1983/1554]~~ [deleted]

[**Note**: article 5(6) of the Consumer Credit Directive]

…

4.8 Pre-contract: unfair business practices: consumer credit lending

…

4.8.5 G Merely offering a *customer* more *credit* than the *customer* requested would not amount to the behaviour in *CONC* 4.8.4R where:

(1) the offer of the higher amount was based on a proper *creditworthiness assessment* ~~or assessment required by *CONC* 5.2.2R(1)~~; or

(2) the *firm* offers more advantageous terms, conditions or prices to *customers* for larger loans, provided that such offers are sufficiently transparent and a proper *creditworthiness assessment* ~~or assessment required by *CONC* 5.2.2R (1)~~ has been carried out;

and the *customer* was not pressurised or unfairly coerced into accepting the higher amount of *credit*.

…

CONC 5.1 (Application), 5.2 (Creditworthiness assessment: before agreement) and 5.3 (Conduct of business in relation to creditworthiness and affordability) are deleted in their entirety. The deleted text is not shown but the section headings are marked [deleted] as shown below.

5.1 Application [deleted]

5.2 Creditworthiness assessment: before agreement [deleted]

5.3 Conduct of business in relation to creditworthiness and affordability [deleted]

After the deleted CONC 5.2 (Creditworthiness assessment: before agreement) insert the following new text. It is not shown underlined.

5.2A Creditworthiness assessment

Application

5.2A.1 R Subject to *CONC* 5.2A.2R, this section applies to a *firm* with respect to *consumer credit lending*.

5.2A.2 R This section does not apply to:

(1) an agreement under which a *firm* takes an article in *pawn* and under the terms of the agreement:

(a) the *customer's* total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article *pawned* by the *customer*; and

(b) the effect of the passing of property in the *pawned* article to the *firm* under section 120 of the *CCA*, or of a sale of the article under section 121 of the *CCA*, would, therefore, be (at the very least) to discharge the debt secured by the *pawn* and any other obligation to pay a sum of money under the agreement including any expenses of sale;

(2) a current account agreement where:

(a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and

(b) if the account-holder did so, this would be a *regulated credit agreement* (overrunning);

(3) a *non-commercial agreement*; or

(4) a *small borrower-lender-supplier agreement* which is a *restricted-use credit agreement*.

Interpretation

5.2A.3 R In this section, references to 'repayment' refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a *regulated credit agreement* or any charge payable by the *customer* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates).

Creditworthiness assessment

5.2A.4 R A *firm* must undertake a reasonable assessment of the creditworthiness of a *customer* before:

(1) entering into a *regulated credit agreement*; or

(2) significantly increasing the amount of *credit* provided under a *regulated credit agreement*; or

(3) significantly increasing a *credit limit* for *running-account credit* under a *regulated credit agreement*.

5.2A.5 R The *firm* must not take a step in *CONC* 5.2A.4R(1) to (3) unless it can demonstrate that it has, before doing so:

(1) undertaken a *creditworthiness assessment* and, where relevant, the assessment under *CONC* 5.2A.31R(2) (guarantors) in accordance

with the *rules* set out in this section; and

(2) had proper regard to the outcome of that assessment in respect of affordability risk.

5.2A.6 G If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last *creditworthiness assessment*, a cumulative increase that is significant, then a further *creditworthiness assessment* is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.

5.2A.7 R A *firm* must base its *creditworthiness assessment* on sufficient information:

(1) of which it is aware at the time the *creditworthiness assessment* is carried out;

(2) obtained, where appropriate, from the *customer*, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable *creditworthiness assessment*.

5.2A.8 G *CONC* 5.2A.20R to *CONC* 5.2A.25G contain *rules* and *guidance* in relation to the factors that should be taken into account in an individual case when deciding how much information is sufficient for the purposes of the *creditworthiness assessment*, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

5.2A.9 R *Rules* and *guidance* in this section apply in relation to carrying out a *creditworthiness assessment*.

The subject matter of the creditworthiness assessment

5.2A.10 R The *firm* must consider:

(1) the risk that the *customer* will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and

(2) the risk to the *customer* of not being able to make repayments under the agreement in accordance with *CONC* 5.2A.12R (referred to as ‘affordability risk’ in this section).

5.2A.11 G In relation to *CONC* 5.2A.10R, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the *creditworthiness assessment*.

5.2A.12 R The *firm* must consider the *customer’s* ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an *open-end agreement*, within a reasonable period;

(2) out of, or using, one or more of the following:

(a) the *customer's* income;

(b) income from savings or assets jointly held by the *customer* with another *person*, income received by the *customer* jointly with another *person* or income received by another *person* in so far as it is reasonable to expect such income to be available to the *customer* to make repayments under the agreement; and/or

(c) savings or other assets where the *customer* has indicated clearly an intention to repay (wholly or partly) using them;

(3) without the *customer* having to borrow to meet the repayments;

(4) without failing to make any other payment the *customer* has a contractual or statutory obligation to make; and

(5) without the repayments having a significant adverse impact on the *customer's* financial situation.

5.2A.13 R If the *customer* intends to make repayments (wholly or partly) using savings or other assets, the *firm* must take into account:

(1) the purpose for which the savings or assets are or will be held;

(2) the likelihood of the savings or assets being available to make repayments under the agreement; and

(3) any significant adverse impact on the *customer's* financial situation of using those savings or assets.

5.2A.14 R When considering affordability risk, the *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

The customer's income and expenditure

5.2A.15 R (1) This *rule* applies unless:

(a) the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *customer* is able to make repayments in accordance with *CONC* 5.2A.12R, so as to make the actions described in (2) to (4) disproportionate; or

(b) the *customer* has indicated clearly an intention to repay wholly using savings or other assets (see *CONC* 5.2A.13R).

(2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *customer's* current income.

(3) Where it is reasonably foreseeable that there is likely to be a reduction in the *customer's* income:

(a) during the term of the agreement; or

(b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see *CONC* 5.2A.26R),

which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that reduction.

(4) The *firm* must take account of the *customer's* income it has determined or estimated in accordance with (2) and (3).

(5) The *firm* may only take into account an expected future increase in the *customer's* income where the *firm* reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.2A.16 G (1) A *firm* that proposes to rely on the exception in *CONC* 5.2A.15R(1)(a) should keep in mind that the burden would be on the *firm* to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the *customer's* income disproportionate.

(2) An estimate of the *customer's* income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

(3) For the purpose of considering the *customer's* income under *CONC* 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the *customer* without independent evidence (for example, in the form of information supplied by a *credit reference agency* or documentation of a third party supplied by the third party or by the *customer*).

(4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out. If, in such a case, the *customer's* income does not increase in line with expectations, the *firm* should consider deferring or limiting the obligation to repay until the *customer's* income has reached an appropriate level.

(5) Income can include income other than salary and wages.

5.2A.17 R (1) This *rule*:

(a) applies only where *CONC* 5.2A.15R also applies; and

(b) does not apply where the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *customer's* non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.

(2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *customer's* current non-discretionary expenditure.

(3) Where it is reasonably foreseeable that there is likely to be an increase in the *customer's* non-discretionary expenditure:

(a) during the term of the agreement; or

(b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see *CONC* 5.2A.26R),

which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that increase.

(4) The *firm* must take account of the *customer's* non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).

(5) The *firm* may only take into account an expected future decrease in non-discretionary expenditure where the *firm* reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.2A.18 G (1) Non-discretionary expenditure referred to in *CONC* 5.2A.17R includes payments needed to meet *priority debts* and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the *customer* has a contractual or statutory obligation to make, such as payment obligations arising under a *credit agreement* or a mortgage contract. Where there is a reasonable expectation that the *customer* will have responsibility to pay only a share or a part of a payment required pursuant to a contractual or statutory obligation then the *firm* may, in appropriate cases, take this into account.

(2) An analysis of the size of the *customer's* debts compared to the *customer's* income may therefore form part of the *creditworthiness assessment* where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in *CONC* 5.2A.20R.

(3) Non-discretionary expenditure includes expenditure for other *persons* whose financial obligations the *customer* meets wholly or in part. Where the *firm* has under *CONC* 5.2A.12R(2)(b) taken into account income received by the *customer* jointly with another *person* or income received by a *person* other than the *customer* it should also take into account non-discretionary expenditure relating to that other *person*. In those circumstances, references in this section to non-discretionary expenditure of the *customer* should be taken to include the non-discretionary expenditure of the other *person*.

(4) An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

(5) Where the *firm* can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the *customer's* income therefore applies, the *firm* is similarly not required to determine or estimate the *customer's* non-discretionary expenditure.

5.2A.19 G (1) For the purpose of considering the *customer's* non-discretionary expenditure under *CONC* 5.2A.17R, the *firm* may take into account statistical data unless it knows or has reasonable cause to suspect that the *customer's* non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the *customer's* situation.

(2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the *firm* is aware, or has reasonable cause to be aware from information in its possession, that the composition of the *customer's* household, or the number of dependants that the *customer* has, or the level of the *customer's* existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

Scope, extent and proportionality of assessment

5.2A.20 R (1) The extent and scope of the *creditworthiness assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.

(2) The *firm* must consider:

(a) the types of information to use in the *creditworthiness assessment*;

(b) the content and level of detail of the information to use;

(c) whether the information in the *firm's* possession is sufficient;

(d) whether and to what extent to obtain additional information from the *customer*;

(e) whether and to what extent to obtain information from a *credit reference agency*;

(f) any other sources of information to use;

(g) whether and to what extent to verify the accuracy of the information that is used;

(h) the degree of evaluation and analysis of the information that is used; and

(i) the steps to take to determine or estimate the *customer's* income or non-discretionary expenditure (where such a determination or estimate is required),

having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the *firm* must have regard when complying with (2) and deciding what steps are needed to make the *creditworthiness assessment* a reasonable one include each of the following where applicable to the agreement:

(a) the type of *credit*;

(b) the amount of the *credit* or, where applicable, the *credit limit*;

(c) the duration (or likely duration) of the *credit*;

(d) the frequency of the repayments;

(e) the amounts of the repayments;

(f) the *total amount payable*;

(g) the *total charge for credit*;

(h) the *annual percentage rate of charge*;

(i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the *customer* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates) is fixed or variable;

(j) any other costs which will or may be payable by or on behalf of the *customer* in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the *customer* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates; and

(k) any other potential adverse consequences for the *customer* arising under the agreement from a failure to make a repayment by the due date.

5.2A.21 G (1) The *firm* may have regard, where appropriate, to the purpose for which the *customer* intends to use the *credit*.

(2) When considering, having regard to the factors in *CONC* 5.2A.20R, what steps the *firm* needs to undertake to make the *creditworthiness assessment* a reasonable one, the *firm* should consider whether the factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the *firm* should weigh up the factors before deciding what type of *creditworthiness assessment* is required.

5.2A.22 G The *firm* should also have regard to information of which it is aware at the time the *creditworthiness assessment* is carried out that may indicate that:

(1) the *customer* is in, has recently experienced, or is likely to experience, financial difficulties (see *CONC* 1.3); or

(2) the *customer* is particularly vulnerable, for example because the *customer* has mental health difficulties or mental capacity limitations (see *CONC* 2.10 and *CONC* 7.2).

5.2A.23 G The *firm* may have regard, where appropriate, to information obtained in the course of previous dealings with the *customer*. However, *the firm* should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

5.2A.24 G (1) The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.

(2) Factors that will affect that level of risk include the actual or potential cost of the *credit* and the *total amount payable* in absolute terms and relative to the *customer's* financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the *total charge for credit* are low, the amount of information that is sufficient to support a reasonable *creditworthiness*

assessment may be less than would be required:

(a) in the case of more expensive *credit* or *credit* that is higher in amount; or

(b) where it is known that the *customer's* financial situation is such that the *credit* may be expected to have a more significant impact.

5.2A.25 G (1) In relation to *CONC* 5.2A.24G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:

(a) the total value of the *customer's* outstanding debts relative to the *customer's* income is high; or

(b) there is a high likelihood that the *customer* will not make repayments under the agreement by their due dates.

(2) In relation to *CONC* 5.2A.25G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

Open-end agreements

5.2A.26 R In relation to an *open-end agreement*, the *firm* must make a reasonable assumption about the likely duration of the *credit* which should take into account:

(1) the terms and conditions of the agreement;

(2) any pre-contractual disclosure and explanation given to the *customer* under the *CCA* or *CONC*; and

(3) the *customer's* intentions, where known to the *firm*.

Assumptions in relation to running-account credit

5.2A.27 R (1) In relation to entering into a *regulated credit agreement* for *running-account credit*, the *firm* must assume that the *customer* draws down the entire *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.

(2) In relation to significantly increasing the *credit limit* that applies to an existing *regulated credit agreement* for *running-account credit*, the *firm* must assume that the *customer* draws down the entire available balance up to the increased *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.

(3) If, after considering the individual circumstances of the particular *customer* of which the *firm* is aware at the time the *creditworthiness*

assessment is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of *credit* and repayments over the duration or likely duration of the *credit*, then the *firm* must do so and these assumptions must be reasonable ones.

(4) The *firm* must set the *credit limit* in the light of the assumptions in (1) to (3).

5.2A.28 G (1) Unless (2) applies, the *firm* should, when making an assumption about the length of a reasonable period for repayment for the purposes of *CONC* 5.2A.27R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the *credit limit*. The *firm* should take into account the terms and conditions of a loan likely to be available to that *customer* (whether from the *firm* or from another *lender*) and any other factors that the *firm* reasonably considers to be relevant.

(2) If, however, after considering the individual circumstances of the particular *customer* of which the *firm* is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the *firm* may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the *customer* complied with those terms, the drawdown of the *credit limit* would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent amount.

(3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of *CONC* 5.2A.27R(3), in addition to the assumptions described in *CONC* 5.2A.27R(1) or (2). In those circumstances, the *firm* should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of its *customers* in relation to that product or type of product, or of *customers* of that type generally, but should also consider any factors particular to the individual *customer*, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in *CONC* 5.2A.27R(1) or (2), as well as in respect of the subsequent duration of the *credit*, depending on those factors.

Lending to joint borrowers and businesses

5.2A.29 G The *firm* may need to take into account the different circumstances that may surround a *customer* where the *customer* is borrowing for business purposes. For example, it may be reasonable to take into account the *customer's* business plan, although the *creditworthiness assessment* should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the *customer* is less regular than for other types of *customer*.

5.2A.30 G (1) Where there are *customers* acting together as joint *borrowers*, the *firm* should consider whether it may be appropriate to carry out a *creditworthiness assessment* separately for each *customer* (as well as one for them together), having regard to the risk to that *customer* arising from the agreement were the *customer* to be treated as being solely responsible for obligations of the joint *borrowers* under the agreement.

(2) Where the *borrower* is a *partnership* or one or more members of an unincorporated association acting as agent for other such members, the *partners* or members may be treated as a single *customer* for the purposes of the *creditworthiness assessment*.

Creditworthiness assessment where there is a guarantor

5.2A.31 R (1) This *rule* applies if, in relation to a *regulated credit agreement*:

(a) an *individual* other than the *borrower* (in this section referred to as 'the guarantor') is to provide a guarantee or an indemnity (or both) (in this *rule* and *CONC* 5.2A.32G referred to as 'the guarantee'); and

(b) the *firm* is required to undertake a *creditworthiness assessment* in respect of the *borrower*.

(2) Before entering into the *regulated credit agreement* or significantly increasing the amount of *credit* provided under the agreement or significantly increasing a *credit limit* for *running-account credit* under the agreement, the *firm* must undertake a reasonable assessment of the potential for the guarantor's commitments in respect of the agreement to have a significant adverse impact on the guarantor's financial situation.

(3) The *firm* must base the assessment under (2) on sufficient information:

(a) of which it is aware at the time the assessment is carried out;

(b) obtained, where appropriate, from the guarantor or from the *borrower* on the guarantor's behalf, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable assessment.

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

5.2A.32 G (1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the *borrower*, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.

(2) If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last assessment under *CONC* 5.2A.31R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.

(3) In this *guidance*, references to 'payment' refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).

(4) The *firm* should, when carrying out an assessment under *CONC* 5.2A.31R(2), have regard to *CONC* 5.2A.8G to *CONC* 5.2A.24G(1) (excluding *CONC* 5.2A.9R, *CONC* 5.2A.14R, *CONC* 5.2A.16G(4), *CONC* 5.2A.20R(3) and *CONC* 5.2A.21G(1)), *CONC* 5.2A.29G and *CONC* 5.2A.30G but as if:

(a) each of those provisions that is a *rule* were *guidance* and as if 'should' appeared in that *rule* instead of 'must' or 'may';

(b) references to 'agreement' are to the 'guarantee';

(c) subject to (g) below, references to 'the *customer*' or '*borrower*' are references to the 'guarantor';

(d) references to 'repayments' are references to 'payments';

(e) references to 'repay' are references to 'pay';

(f) references to the '*creditworthiness assessment*' are references to the assessment under *CONC* 5.2A.31R(2);

(g) references in *CONC* 5.2A.20R(2)(d) and *CONC* 5.2A.23G to 'the *customer*' are to the 'guarantor' as well as 'the *customer*'; and

(h) the reference in *CONC* 5.2A.20R(2) to the factors listed in *CONC* 5.2A.20R(3) is to the factors listed in *CONC* 5.2A.32G(5).

(5) The factors to which the *firm* should have regard for the purposes of *CONC* 5.2A.19R(2) when deciding what steps should be taken to make the assessment under *CONC* 5.2A.31R(2) a reasonable one include each of the following:

(a) the total potential liability of the guarantor under the guarantee;

(b) the duration (or likely duration) of the guarantee;

(c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and

(d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.

(6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor's financial circumstances, where known.

(7) The provision of the guarantee, and the reasonable assessment of the guarantor under *CONC* 5.2A.31R(2), do not remove or reduce the obligation on the *firm* to carry out a reasonable *creditworthiness assessment* of the *borrower*. *Firms* are reminded of the *rule* in *CONC* 5.2A.14R that, in considering affordability risk for the *borrower*, a *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

Policies and procedures for creditworthiness assessment

5.2A.33 R A *firm* must:

(1) establish, implement and maintain clear and effective policies and procedures:

(a) to enable it to carry out *creditworthiness assessments* or assessments under *CONC* 5.2A.31R(2); and

(b) setting out the principal factors it will take into account in carrying out *creditworthiness assessments* or assessments under *CONC* 5.2A.31R(2);

(2) set out the policies and procedures in (1) in writing, and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;

(3) assess and periodically review:

(a) the effectiveness of the policies and procedures in (1); and

(b) the *firm's* compliance with those policies and procedures and with its obligations under *CONC* 5.2A;

(4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;

(5) maintain a record, on paper or in electronic form, of each transaction where a *regulated credit agreement* is entered into, or where there is a significant increase in the amount of *credit* provided under a

regulated credit agreement or a *credit limit* for *running-account credit* under a *regulated credit agreement*, sufficient to demonstrate that:

(a) a *creditworthiness assessment* or an assessment under *CONC* 5.2A.31R(2) was carried out where required; and

(b) the *creditworthiness assessment* or the assessment under *CONC* 5.2A.31R(2) was reasonable and was undertaken in accordance with *CONC* 5.2A,

and so to enable the *FCA* to monitor the *firm's* compliance with its obligations under *CONC* 5.2A; and

(6) (other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

5.2A.34 G *Firms* are reminded of the *guidance* on record-keeping in *SYSC* 9.1.4G and 9.1.5G.

Unfair business practices

5.2A.35 R A *firm* must not complete some or all of those parts of an application for *credit* under a *regulated credit agreement* intended to be completed by the *customer*, without the consent of the *customer* or unless the *customer* has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.2A.36 R A *firm* must not accept an application for *credit* under a *regulated credit agreement* where the *firm* knows or has reasonable cause to suspect that the *customer* has not been truthful in completing the application in relation to information relevant to the *creditworthiness assessment*.

5.2A.37 G An example of when a *firm* has reasonable cause to suspect that the *customer* has not been truthful may be where information supplied by the *customer* concerning income or employment status is clearly inconsistent with other information of which the *firm* is aware.

CONC 5.5 (Creditworthiness assessment: P2P agreements) is deleted in its entirety. The deleted text is not shown but the section heading is marked [deleted] as shown below.

5.5 Creditworthiness assessment: P2P agreements [deleted]

After the deleted CONC 5.5 (Creditworthiness assessment: P2P agreements) insert the following new section. It is not shown underlined.

5.5A Creditworthiness assessment: P2P agreements

Application

5.5A.1 R Subject to *CONC* 5.5A.2R, this section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* or a prospective *borrower* under a *P2P agreement*.

5.5A.2 R This section does not apply in relation to:

(1) an agreement under which a *person* takes an article in *pawn* and under the terms of the agreement:

(a) the *borrower's* total financial liability (including in respect of capital, interest and all other charges including any expenses of sale) is not capable of exceeding the true market value of the article *pawned* by the *borrower*; and

(b) the effect of the passing of property in the *pawned* article to the *person* under section 120 of the *CCA*, or of a sale of the article under section 121 of the *CCA*, would, therefore, be (at the very least) to discharge the debt secured by the *pawn* and any other obligation to pay a sum of money under the agreement including any expenses of sale; or

(2) a current account agreement where:

(a) there is a possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and

(b) if the account-holder did so, this would be a *P2P agreement* (overrunning).

5.5A.3 G (1) This section contains *rules* and *guidance* that apply to a *person* operating an electronic system that facilitates *persons* becoming *lenders* and *borrowers* under *P2P agreements*, in contrast to *CONC* 5.2A which applies to a *lender* engaged in *consumer credit lending*.

(2) Where *CONC* 5.2A applies to a *lender*, and *CONC* 5.5A applies to the *person* operating the electronic system, each will be subject to a separate obligation to undertake a *creditworthiness assessment*. However, *firms* are reminded of *SYSC* 8 which permits outsourcing of operational functions subject to certain requirements (and with the *firm* outsourcing functions remaining fully responsible for discharging all of its obligations under the *regulatory system*).

Interpretation

5.5A.4 R In this section, references to 'repayment' refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a *P2P agreement* or any charge payable by the *borrower* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates) and references to a '*borrower*' include, where the context so allows, references to a prospective *borrower*.

Creditworthiness assessment

5.5A.5 R A *firm* must undertake a reasonable assessment of the creditworthiness of a *borrower* before:

(1) a *P2P agreement* is made; or

(2) the amount of *credit* provided under a *P2P agreement* is significantly increased; or

(3) a *credit limit* for *running-account credit* under a *P2P agreement* is significantly increased.

5.5A.6 R The *firm* must not facilitate the taking of a step in *CONC* 5.5A.5R(1) to (3) unless it can demonstrate that it has, before doing so:

(1) undertaken a *creditworthiness assessment* and, where relevant, the assessment under *CONC* 5.5A.32R(2) (guarantors) in accordance with the *rules* set out in this section; and

(2) had proper regard to the outcome of that assessment in respect of affordability risk.

5.5A.7 G If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last *creditworthiness assessment*, a cumulative increase that is significant, then a further *creditworthiness assessment* is required. This may be the case, for example, where a number of consecutive increases have been made over a period, none of which is significant when considered in isolation but the aggregate sum of which is significant.

5.5A.8 R A *firm* must base its *creditworthiness assessment* on sufficient information:

(1) of which it is aware at the time the *creditworthiness assessment* is carried out;

(2) obtained, where appropriate, from the *borrower*, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable *creditworthiness assessment*.

5.5A.9 G *CONC* 5.5A.21R to *CONC* 5.5A.26G contain *rules* and *guidance* in relation to the factors that should be taken into account in an individual case when deciding how much information is sufficient for the purposes of the *creditworthiness assessment*, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

5.5A.10 R *Rules* and *guidance* in this section apply in relation to carrying out a *creditworthiness assessment*.

The subject matter of the creditworthiness assessment

5.5A.11 R The *firm* must consider:

(1) the risk that the *borrower* will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and

(2) the risk to the *borrower* of not being able to make repayments under the agreement in accordance with *CONC* 5.5A.13R (referred to as 'affordability risk' in this section).

5.5A.12 G In relation to *CONC* 5.5A.11R, there may be circumstances in which the risk that one repayment will be missed or will be late is relevant to the *creditworthiness assessment*.

5.5A.13 R The *firm* must consider the *borrower's* ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an *open-end agreement*, within a reasonable period;

(2) out of, or using, one or more of the following:

(a) the *borrower's* income;

(b) income from savings or assets jointly held by the *borrower* with another *person*, income received by the *borrower* jointly with another *person* or income received by another *person* in so far as it is reasonable to expect such income to be available to the *borrower* to make repayments under the agreement; and/or

(c) savings or other assets where the *borrower* has indicated clearly an intention to repay (wholly or partly) using them;

(3) without the *borrower* having to borrow to meet the repayments;

(4) without failing to make any other payment the *borrower* has a contractual or statutory obligation to make; and

(5) without the repayments having a significant adverse impact on the *borrower's* financial situation.

5.5A.14 R If the *borrower* intends to make repayments (wholly or partly) using savings or other assets, the *firm* must take into account:

(1) the purpose for which the savings or assets are or will be held;

(2) the likelihood of the savings or assets being available to make repayments under the agreement; and

(3) any significant adverse impact on the *borrower's* financial situation of using those savings or assets.

5.5A.15 R When considering affordability risk, the *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

The borrower's income and expenditure

5.5A.16 R (1) This *rule* applies unless:

(a) the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *borrower* is able to make repayments in accordance with *CONC* 5.5A.13R, so as to make the actions described in (2) to (4) disproportionate; or

(b) the *borrower* has indicated clearly an intention to repay wholly using savings or other assets (see *CONC* 5.5A.14R).

(2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *borrower's* current income.

(3) Where it is reasonably foreseeable that there is likely to be a reduction in the *borrower's* income:

(a) during the term of the agreement; or

(b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see *CONC* 5.5A.27R),

which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that reduction.

(4) The *firm* must take account of the *borrower's* income it has determined or estimated in accordance with (2) and (3).

(5) The *firm* may only take into account an expected future increase in the *borrower's* income where the *firm* reasonably believes on the basis of appropriate evidence that the increase is likely to happen during the term of the agreement or, in the case of an *open-end agreement*,

during the likely duration of the *credit*.

5.5A.17 G (1) A *firm* that proposes to rely on the exception in *CONC* 5.5A.16R(1)(a) should keep in mind that the burden would be on the *firm* to demonstrate, if challenged, that the absence of a material affordability risk was obvious such as to make the process of determination or estimation of the *borrower's* income disproportionate.

(2) An estimate of the *borrower's* income may include a minimum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

(3) For the purpose of considering the *borrower's* income under *CONC* 5.2A.16R, it is not generally sufficient to rely solely on a statement of current income made by the *borrower* without independent evidence (for example, in the form of information supplied by a *credit reference agency* or documentation of a third party supplied by the third party or by the *borrower*).

(4) An example of where it may be reasonable to take into account an expected future increase in income would be a loan to fund the provision of further or higher education, provided that an appropriate assessment required by this section is carried out.

(5) Income can include income other than salary or wages.

5.5A.18 R (1) This *rule*:

(a) applies only where *CONC* 5.5A.16R also applies; and

(b) does not apply where the *firm* can demonstrate that it is obvious in the circumstances of the particular case that the *borrower's* non-discretionary expenditure is unlikely to have a material impact on affordability risk, so as to make the actions described in (2) to (4) disproportionate.

(2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *borrower's* current non-discretionary expenditure.

(3) Where it is reasonably foreseeable that there is likely to be an increase in the *borrower's* non-discretionary expenditure:

(a) during the term of the agreement; or

(b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see *CONC* 5.5A.27R),

which could have a material impact on affordability risk, the *firm* must take reasonable steps to estimate the amount of that increase.

(4) The *firm* must take account of the *borrower's* non-discretionary expenditure it has determined or estimated in accordance with (2) and (3).

(5) The *firm* may only take into account an expected future decrease in non-discretionary expenditure where the *firm* reasonably believes on the basis of appropriate evidence that the decrease is likely to happen during the term of the agreement or, in the case of an *open-end agreement*, during the likely duration of the *credit*.

5.5A.19 G (1) Non-discretionary expenditure referred to in *CONC* 5.5A.18R includes payments needed to meet *priority debts* and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. It also includes payments the *borrower* has a contractual or statutory obligation to make, such as payment obligations arising under a *credit agreement* or a mortgage contract. Where there is a reasonable expectation that the *borrower* will have responsibility to pay only a share or a part of a payment required pursuant to a contractual or statutory obligation then the *firm* may, in appropriate cases, take this into account.

(2) An analysis of the size of the *borrower's* debts compared to the *borrower's* income may therefore form part of the *creditworthiness assessment* where detailed analysis of this kind is proportionate to the individual circumstances of the case, having regard to the factors listed in *CONC* 5.5A.21R.

(3) Non-discretionary expenditure includes expenditure for other *persons* whose financial obligations the *borrower* meets wholly or in part. Where the *firm* has under *CONC* 5.5A.13R(2)(b) taken into account income received by the *borrower* jointly with another *person* or income received by a *person* other than the *borrower* it should also take into account non-discretionary expenditure relating to that other *person*. In those circumstances, references in this section to non-discretionary expenditure of the *borrower* should be taken to include the non-discretionary expenditure of the other *person*.

(4) An estimate of non-discretionary expenditure may include a maximum amount or a range, provided that any assumptions on which the estimate is based are reasonable in the circumstances.

(5) Where the *firm* can demonstrate that it is obvious that there is no material affordability risk and the exception from the requirement to determine or estimate the *borrower's* income therefore applies, the *firm* is similarly not required to determine or estimate the *borrower's* non-discretionary expenditure.

5.5A.20 G (1) For the purpose of considering the *borrower's* non-discretionary expenditure under *CONC* 5.5A.18R, the *firm* may take into account statistical data unless it knows or has reasonable cause to suspect that the *borrower's* non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the *borrower's* situation.

(2) It is unlikely to be appropriate to place reliance on statistical data, for example, where the *firm* is aware, or has reasonable cause to be aware from information in its possession, that the composition of the *borrower's* household, or the number of dependants that the *borrower* has, or the level of the *borrower's* existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based.

Scope, extent and proportionality of assessment

5.5A.21 R (1) The extent and scope of the *creditworthiness assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.

(2) The *firm* must consider:

(a) the types of information to use in the *creditworthiness assessment*;

(b) the content and level of detail of the information to use;

(c) whether the information in the *firm's* possession is sufficient;

(d) whether and to what extent to obtain additional information from the *borrower*;

(e) whether and to what extent to obtain information from a *credit reference agency*;

(f) any other sources of information to use;

(g) whether and to what extent to verify the accuracy of the information that is used;

(h) the degree of evaluation and analysis of the information that is used; and

(i) the steps to take to determine or estimate the *borrower's* income or non-discretionary expenditure (where such a determination or estimate is required),

having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the *firm* must have regard when complying with (2) and deciding what steps are needed to make the *creditworthiness assessment* a reasonable one include each of the following where

applicable to the agreement:

(a) the type of *credit*;

(b) the amount of the *credit* or, where applicable, the *credit limit*;

(c) the duration (or likely duration) of the *credit*;

(d) the frequency of the repayments;

(e) the amounts of the repayments;

(f) the *total amount payable*;

(g) the *total charge for credit* or the *cost of credit*;

(h) the *annual percentage rate of charge*;

(i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the *borrower* under a *hire-purchase agreement* in respect of an option to purchase the *goods* to which the agreement relates) is fixed or variable;

(j) any other costs which will or may be payable by or on behalf of the *borrower* in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the *borrower* under a *hire-purchase agreement* in respect of an option to purchase the *goods* to which the agreement relates; and

(k) any other potential adverse consequences for the *borrower* arising under the agreement from a failure to make a repayment by the due date.

5.5A.22 G (1) The *firm* may have regard, where appropriate, to the purpose for which the *borrower* intends to use the *credit*.

(2) When considering, having regard to the factors in *CONC* 5.5A.21R, what steps the *firm* needs to undertake to make the *creditworthiness assessment* a reasonable one, the *firm* should consider whether the factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the *firm* should weigh up the factors before deciding what type of *creditworthiness assessment* is required.

5.5A.23 G The *firm* should also have regard to information of which it is aware at the time the *creditworthiness assessment* is carried out that may indicate that:

(1) the *borrower* is in, has recently experienced, or is likely to experience, financial difficulties (see *CONC* 1.3); or

(2) the *borrower* is particularly vulnerable, for example because the *borrower* has mental health difficulties or mental capacity limitations (see *CONC* 2.10 and *CONC* 7.2).

5.5A.24 G The *firm* may have regard, where appropriate, to information obtained in the course of previous dealings with the *borrower*. However, the *firm* should also consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it.

5.5A.25 G (1) The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.

(2) Factors that will affect that level of risk include the actual or potential cost of the *credit* and the *total amount payable* (or, where the *P2P agreement* is not a *regulated credit agreement*, the sum of the *cost of credit* plus the *credit limit* or the total sums made available under the *P2P agreement*, as well as any *advance payment*) in absolute terms and relative to the *borrower's* financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the *total charge for credit* are low, the amount of information that is sufficient to support a reasonable *creditworthiness assessment* may be less than would be required:

(a) in the case of more expensive *credit* or *credit* that is higher in amount; or

(b) where it is known that the *borrower's* financial situation is such that the *credit* may be expected to have a more significant impact.

5.5A.26 G (1) In relation to *CONC* 5.5A.25G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:

(a) the total value of the *borrower's* outstanding debts relative to the *borrower's* income is high; or

(b) there is a high likelihood that the *borrower* will not make repayments under the agreement by their due dates.

(2) In relation to *CONC* 5.5A.26G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

Open-end agreements

5.5A.27 R In relation to an *open-end agreement*, the *firm* must make a reasonable assumption about the likely duration of the *credit* which should take into account:

(1) the terms and conditions of the agreement;

(2) any pre-contractual disclosure and explanation given to the *borrower* under the *CCA* or *CONC*; and

(3) the *borrower's* intentions, where known to the *firm*.

Assumptions in relation to running-account credit

5.5A.28 R (1) In relation to a *lender* entering into a *P2P agreement* for *running-account credit*, the *firm* must assume that the *borrower* draws down the entire *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.

(2) In relation to a *lender* significantly increasing the *credit limit* that applies to an existing *P2P agreement* for *running-account credit*, the *firm* must assume that the *borrower* draws down the entire available balance up to the increased *credit limit* at the earliest opportunity and repays by equal instalments over a reasonable period.

(3) If, after considering the individual circumstances of the particular *borrower* of which the *firm* is aware at the time the *creditworthiness assessment* is carried out, it is reasonable to make further assumptions about the timing and amounts of drawdowns of *credit* and repayments over the duration or likely duration of the *credit*, then the *firm* must do so and these assumptions must be reasonable ones.

(4) The *firm* must take reasonable steps to procure the *lender* under the *P2P agreement* to set the *credit limit* in the light of the assumptions in (1) to (3).

5.5A.29 G (1) Unless (2) applies, the *firm* should, when making an assumption about the length of a reasonable period for repayment for the purposes of *CONC* 5.5A.28R(1) or (2), have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the *credit limit*. The *firm* should take into account the terms and conditions of a loan likely to be available to that *borrower* (whether from the *lender* under the *P2P agreement* or from another *lender*) and any other factors that the *firm* reasonably considers to be relevant.

(2) If, however, after considering the individual circumstances of the particular *borrower* of which the *firm* is aware, it is reasonable to make a different assumption about the length of a reasonable period for repayment, the *firm* may do so. This may be the case, for example, where the level of the periodic minimum repayment due under the terms of the agreement is such that, if the *borrower* complied with those terms, the drawdown of the *credit limit* would be repaid more quickly than the typical duration of a fixed-sum loan for an equivalent

amount.

(3) This sub-paragraph applies if it is reasonable to make further assumptions for the purposes of *CONC* 5.5A.28R(3), in addition to the assumptions described in *CONC* 5.5A.28R(1) or (2). In those circumstances, the *firm* should, when deciding what a reasonable assumption is, have regard to typical drawdown and repayment patterns of *borrowers* under *P2P agreements* which it has facilitated, or of *borrowers* of that type generally, but should also consider any factors particular to the individual *borrower*, where known. It may or may not be reasonable to make further assumptions in respect of the initial reasonable period referred to in *CONC* 5.5A.28R(1) or (2), as well as in respect of the subsequent duration of the *credit*, depending on those factors.

Lending to joint borrowers and businesses

5.5A.30 G The *firm* may need to take into account the different circumstances that may surround a *borrower* where the *borrower* is borrowing for business purposes. For example, it may be reasonable to take into account the *borrower's* business plan, although the *creditworthiness assessment* should not be based solely on that plan. Similarly, it may be reasonable to take into account the nature and resources of the business. It may also be the case, for instance, that the income and non-discretionary expenditure of the *borrower* is less regular than for other types of *borrower*.

5.5A.31 G (1) Where there are *borrowers* acting together as joint *borrowers*, the *firm* should consider whether it may be appropriate to carry out a *creditworthiness assessment* separately for each *borrower* (as well as one for them together), having regard to the risk to that *borrower* arising from the agreement were the *borrower* to be treated as being solely responsible for obligations of the joint *borrowers* under the agreement.

(2) Where the *borrower* is a *partnership* or one or more members of an unincorporated association acting as agent for other such members, the members or *partners* may be treated as a single *borrower* for the purposes of the *creditworthiness assessment*.

Creditworthiness assessment where there is a guarantor

5.5A.32 R (1) This *rule* applies if, in relation to a *P2P agreement*:

(a) an *individual* other than the *borrower* (in this section referred to as 'the guarantor') is to provide a guarantee or an indemnity (or both) (in this *rule* and *CONC* 5.2A.33G referred to as 'the guarantee'); and

(b) the *firm* is required to undertake a *creditworthiness assessment* in respect of the *borrower*.

(2) Before the *P2P agreement* is made or the amount of *credit* provided under the agreement is significantly increased or a *credit limit* for *running-account credit* under the agreement is significantly increased, the *firm* must undertake a reasonable assessment of the potential for the guarantor's commitments in respect of the agreement to have a significant adverse impact on the guarantor's financial situation.

(3) The *firm* must base the assessment under (2) on sufficient information:

(a) of which it is aware at the time the assessment is carried out;

(b) obtained, where appropriate, from the guarantor or from the *borrower* on the guarantor's behalf, and where necessary from a *credit reference agency*, and

the information must enable the *firm* to carry out a reasonable assessment.

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

5.5A.33 G (1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the *borrower*, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.

(2) If an increase in the amount of *credit* or in the *credit limit* is not itself significant but would result in there having been, since the last assessment under *CONC* 5.5A.32R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.

(3) In this *guidance*, references to payment refer to any payment under the guarantee (excluding any charge for non-compliance with the guarantee).

(4) The *firm* should, when carrying out an assessment under *CONC* 5.5A.32R(2), have regard to *CONC* 5.5A.9G to *CONC* 5.5A.25G(1) (excluding *CONC* 5.5A.10R, *CONC* 5.5A.15R, *CONC* 5.5A.17G(4), *CONC* 5.5A.21R(3) and *CONC* 5.5A.22G(1)), *CONC* 5.5A.30G and *CONC* 5.5A.31G but as if:

(a) each of those provisions that is a *rule* were *guidance* and as if 'should' appeared in that *rule* instead of 'must' or 'may';

(b) references to 'agreement' are to the 'guarantee';

(c) subject to (g) below, references to 'the *borrower*' are references to the 'guarantor';

(d) references to 'repayments' are references to 'payments';

(e) references to 'repay' are references to 'pay';

(f) references to the '*creditworthiness assessment*' are references to the assessment under *CONC* 5.5A.32R(2);

(g) references in *CONC* 5.5A.21R(2)(d) and *CONC* 5.5A.24G to 'the *borrower*' are to the 'guarantor' as well as 'the *borrower*'; and

(h) the reference in *CONC* 5.5A.21R(2) to the factors listed in *CONC* 5.5A.21R(3) is to the factors listed in *CONC* 5.5A.33G (5).

(5) The factors to which the *firm* should have regard for the purposes of *CONC* 5.5A.21R(2) when deciding what steps should be taken to make the assessment under *CONC* 5.5A.32R(2) a reasonable one include each of the following:

(a) the total potential liability of the guarantor under the guarantee;

(b) the duration (or likely duration) of the guarantee;

(c) any other costs, including any charge for non-compliance with the guarantee, which will or may be payable by or on behalf of the guarantor in connection with the guarantee; and

(d) any other potential adverse consequences for the guarantor arising under the guarantee from a failure to make a payment by the due date.

(6) Factors that will affect the level of affordability risk arising out of the guarantee include the total potential liability under the guarantee in absolute terms and relative to the guarantor's financial circumstances, where known.

(7) The provision of the guarantee, and the reasonable assessment of the guarantor under *CONC* 5.5A.32R(2), do not remove or reduce the obligation on the *firm* to carry out a reasonable *creditworthiness assessment* of the *borrower*. *Firms* are reminded of the *rule* in *CONC* 5.5A.15R that, in considering affordability risk for the *borrower*, a *firm* must not take into account the existence of (or the intention to provide or request the provision of) any guarantee or indemnity or other form of *security*.

Policies and procedures for creditworthiness assessment

5.5A.34 R A *firm* must:

(1) establish, implement and maintain clear and effective policies and procedures:

(a) to enable it to carry out *creditworthiness assessments* or assessments under *CONC* 5.5A.32R(2); and

(b) setting out the principal factors it will take into account in carrying out *creditworthiness assessments* or assessments under *CONC* 5.5A.32R(2);

(2) set out the policies and procedures in (1) in writing, and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;

(3) assess and periodically review:

(a) the effectiveness of the policies and procedures in (1); and

(b) the *firm's* compliance with those policies and procedures and with its obligations under *CONC* 5.5A;

(4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;

(5) maintain a record, on paper or in electronic form, of each transaction where a *P2P agreement* is entered into, or where there is a significant increase in the amount of *credit* provided under a *P2P agreement* or a *credit limit* for *running-account credit* under a *P2P agreement*, sufficient to demonstrate that:

(a) a *creditworthiness assessment* or an assessment under *CONC* 5.5A.32R(2) was carried out where required; and

(b) the *creditworthiness assessment* or the assessment under *CONC* 5.5A.32R(2) was reasonable and was undertaken in accordance with *CONC* 5.5A,

and so to enable the *FCA* to monitor the *firm's* compliance with its obligations under *CONC* 5.5A; and

(6) (other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

5.5A.35 G *Firms* are reminded of the *guidance* on record-keeping in *SYSC* 9.1.4G and 9.1.5G.

Unfair business practices

5.5A.36 R A *firm* must not complete some or all of those parts of an application for *credit* under a *P2P agreement* intended to be completed by the *borrower*, without the consent of the *borrower* or unless the *borrower* has been advised to check the application (and has had a full opportunity to do so) before signing the agreement.

5.5A.37 R A *firm* must inform the prospective *lender* under a *P2P agreement* where the *firm* knows or has reasonable cause to suspect that the *borrower* has not been truthful in completing the application for *credit* under the *P2P agreement* in relation to information relevant to the *creditworthiness assessment*.

5.5A.38 G An example of when a *firm* has reasonable cause to suspect that the *borrower* has not been truthful may be where information supplied by the *borrower* concerning income or employment status is clearly inconsistent with other information of which the *firm* is aware.

Amend the following as shown.

6 Post contractual requirements

6.1 Application

…

6.1.2 G (1) ~~*CONC* 6.2,~~ *CONC* 6.5 and *CONC* 6.7 apply to *firms* with respect to *consumer credit lending*.

…

…

CONC 6.2 (Assessment of creditworthiness: during agreement) is deleted in its entirety. The deleted text is not shown but the section heading is marked [deleted] as shown below.

6.2 Assessment of creditworthiness: during agreement <u>[deleted]</u>

Amend the following as shown.

15 Agreements secured on land

15.1 Application

…

15.1.9	G	Before a *regulated credit agreement* secured on *land* is entered into: (1) the *firm* should consider the adequate explanations it should give to the *customer* under *CONC* 4.2; and [**Note**: paragraph 3.1 (box) of *ILG*] (2) the *firm* is required under *CONC* <u>5.2A</u> ~~5.2.2R(1) to assess the potential for commitments under the agreement to adversely impact the *customer's* financial situation~~ <u>to carry out a *creditworthiness assessment*</u>. [**Note**: paragraphs 1.14 and 4.1 of *ILG*]

Pub ref: 005683

12 Endeavour Square London E20 1JN
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk