Financial Conduct Authority

Consumer credit – feedback on CP15/6 and final rules and guidance

September 2015

Policy Statement

PS15/23

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In this Policy Statement we report on the main issues arising from Consultation Paper 15/6 *(Consumer credit – proposed changes to our rules and guidance*) and publish the final rules and guidance.

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Abbreviations used in this paper

APR	Annual percentage rate of charge
BIS	Department for Business, Innovation & Skills
CBA	Cost benefit analysis
CCA	Consumer Credit Act 1974
CCD	Consumer Credit Directive
CDFI	Community development finance institution
CFO	Community finance organisation
CMA	Competition and Markets Authority
CONC	Consumer Credit sourcebook
CP	Consultation paper
CPA	Continuous payment authority
CRA	Credit reference agency
DISP	Dispute Resolution: Complaints sourcebook
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
GABRIEL	The FCA's online regulatory reporting system
HCSTC	High-cost short-term credit
OFT	Office of Fair Trading
PERG	Perimeter Guidance manual
PRIN	Principles for Businesses sourcebook
PS	Policy statement
PSRs	Payment Services Regulations 2009

P2P	Peer-to-peer
SMS	Short Message Service
SUP	Supervision manual

1. Overview

Introduction

1.1 In this policy statement we set out our responses to the feedback we received to our consultation *Consumer credit – proposed changes to our rules and guidance* (CP15/6), published in February 2015.[1] This response deals with the issues relating to credit broking, lending, financial promotions and debt. Our response on issues relating to the Mortgage Credit Directive was published in PS15/20 in July 2015.[2]

1.2 As noted in CP15/6, our consumer credit regime is relatively new. We are still learning more about how the market operates, and the risks to consumers. We are therefore finding it necessary to propose more changes to our requirements than we would usually do for a sector that we have been regulating for longer. We will continue to monitor developments in the market, and outcomes of our work in authorising and supervising firms, and may need to propose further changes.

Who should read this document?

1.3 This policy statement will primarily interest:

- authorised firms with permissions in relation to credit-related regulated activities, including firms with interim permission
- firms that are considering applying for authorisation to carry out these activities
- trade bodies representing consumer credit firms
- not-for-profit debt advice bodies
- consumer organisations

1.4 This document may also interest consumers, in particular anyone who has taken out a loan or other credit product, either directly or via a credit broker, or had difficulties paying back debt.

1 www.fca.org.uk/static/fca/documents/cp-15-06.pdf

2 *Implementation of the Mortgage Credit Directive: Consequential Changes to the Consumer Credit Sourcebook (CONC)*, PS15/20, July 2015.

Context

1.5 Since taking over credit regulation from the Office of Fair Trading (OFT) in April 2014, we have made a number of changes to our rules and guidance. In particular, we published rules for a price cap on high-cost short-term credit (HCSTC) in November 2014[3] and new rules on credit broking in December 2014.[4]

1.6 In CP15/6 we proposed some relatively minor changes to our rules and guidance in relation to credit brokers, lending (including guarantor lending), financial promotions and debt. Some of these were intended to address areas of harm to consumers that had come to light through our experience of supervising the consumer credit market. Others were clarifications or amendments to ensure our rules clearly reflect our policy intention or to respond to issues raised by firms or other stakeholders.

Responses to our consultation

1.7 We received around 70 responses to our consultation from a wide range of stakeholders. We also received feedback in other ways including from six roadshows that we held across the country, and a webinar, where we spoke directly to firms affected by our proposals. Some stakeholders also corresponded with us directly.

1.8 In general, respondents supported the proposed changes, but a number of concerns were raised together with requests for clarification, as highlighted in this document.

1.9 In light of comments, we have amended some of the proposals, and have deferred some issues for further consideration. In particular, we have amended the scope of the proposals on guarantor lending and allowed for the pre-contract explanation to be provided as part of independent legal advice, subject to appropriate safeguards. We have also modified aspects of our proposals on financial promotions.

What happens next?

1.10 Most of the changes will come into force on **2 November 2015**.[5]

1.11 The changes in relation to COND, DISP, PERG, CONC 7.6 (exercise of continuous payment authority) and CONC 8.3 (information and advice) come into force on **28 September 2015**.

1.12 Chapter 7 sets out our plans for future consumer credit policy work, including in relation to credit broking and guarantor lending.

3 *Detailed rules for the price cap on high-cost short-term credit (including feedback on CP14/20 and final rules),* PS14/16, November 2014.

4 *Credit broking and fees*, PS14/18, December 2014.

5 See also paragraph 1.22 of CP15/6.

2.
Credit brokers

Introduction

2.1 We consulted on whether to retain the rules on credit broking published in PS14/18, with a small modification, and whether to make some minor additional rules (Q1 to Q3). We also sought views and evidence on wider issues relating to credit broking, including appropriate forms of remuneration, disclosure of fees/commissions and the timing of fee payments (Q4).

2.2 This chapter summarises feedback on Q1 to Q3 together with our response. Further detail can be found in the table in Annex 2. It also provides feedback on our review of the initial impact of the PS14/18 rules and explains how we intend to proceed with the wider issues raised in response to Q4.

2.3 We have made all but one of the rules consulted upon. The one exception is the small modification to the PS14/18 rule on the GABRIEL reporting of web domain names. We have decided to delay implementing the proposal to make GABRIEL reporting mandatory for authorised firms, pending further consideration.

Initial impact of the PS14/18 rules

2.4 We wanted to test whether the rules published in PS14/18 have addressed the concerns that we had identified.

2.5 We requested updated information in April 2015 from the same stakeholders whose information helped inform the decision to introduce the rules in PS14/18, and we compared data before the rules were published with data after publication. We were aware that, as the rules came into effect in January, any conclusions drawn at this early stage have to be viewed in that context.

2.6 Information provided by the majority of the stakeholders suggested that, in conjunction with proactive supervisory and enforcement action, the rules appear to have made a significant difference and have reduced consumer harm. In addition, the rules have equipped the FCA with stronger tools with which to challenge poor practice by firms.

2.7 We also found evidence to suggest that some firms are attempting to avoid or game the rules by moving to alternative business models or changing practices in ways that could themselves cause harm. We are continuing to monitor this and using our powers to take action where appropriate.

General feedback on the introduction of the rules

Q1: Do you agree that the rules in PS14/18 should be retained? If not, please explain what changes you would propose and why.

2.8 Some respondents expressed reservations about the introduction of the rules and the fact that this was done without prior consultation or formal cost benefit analysis. Others felt that our reliance on section 138L of the Financial Services and Markets Act (FSMA) was inappropriate in this case and more conventional regulatory action could have been taken. Some complained that the time for implementation had been too short.

2.9 Most concluded that, having had to adapt their processes to meet the new requirements, they would prefer not to have to change again.

Our response

This is the first time, since we became the FCA on 1 April 2013, that we have relied on section 138L of FSMA to introduce rules without consultation. We did so because the practices the rules were intended to address were causing substantial harm, in particular to vulnerable consumers and those in financial difficulty. We took the view that giving firms a month to adapt their systems and processes to comply with the rules achieved a fair balance between the need to act urgently to address the harm being caused to consumers and the impact on firms.

We were already taking supervisory and enforcement action with regard to a number of firms. However, we considered that the new rules, targeted at ensuring that key features of brokers' relationships with consumers are transparent, would both protect consumers and help the FCA take action where firms breach our rules or the law.

Fee and payment details

2.10 Most respondents agreed that the rules on fee and payment details should be retained. Two lenders stated that they no longer accept business from fee-charging brokers.

2.11 One respondent asked that Financial Ombudsman Service (the ombudsman service) details should be added to the information notice, while another proposed that the notice be incorporated into the terms of business document which the customer signs.

2.12 A respondent suggested that insurance intermediaries should be able to offer a credit agreement at point of sale ensuring that all of the details in the notice are read out during the call with verbal agreement obtained from the consumer. The notice would then be sent in a durable medium afterwards. They argued that, for telesales, having to get an information notice signed before taking payment would leave the consumer having to pay the whole premium in one go, or having to seek an alternative insurance policy that might be less competitive or offer a lower level of cover.

Our response

The intent is to keep the information notice as short as possible to ensure that the key messages are understood by the consumer. Similarly, if the information notice were incorporated within other paperwork, we consider that its purpose would be limited. We have not therefore amended these aspects of our rules.

Rules in DISP 1.2 already specify how and when firms must inform consumers of their rights in relation to the ombudsman service.

We do not endorse any particular durable medium[6] method and it is for firms to seek legal advice about their particular circumstances. We are aware that some firms involved in telesales have adapted their processes since the rules came into effect; each firm must ensure that they comply with the rules.

Transparency

2.13 One respondent asked for more specific guidance on the placement of the 'broker not lender' statement on websites and other promotional material. Another proposed that prominence of the required information should be specified.

2.14 A respondent felt that consumers should be invited in all instances to consent to their personal data being passed on. In particular, credit brokers should list in financial promotions each person or organisation to which they propose to disclose personal data so that consumers can give or withhold consent on a case-by-case basis.

2.15 Another respondent asked for consistency in relation to transparency rules across all consumer credit and other financial services.

2.16 One respondent asked for clarification as to whether the limited space exclusion in electronic communications[7] also applies to the transparency statements.

2.17 A respondent said that a huge amount of damage can be done with a new website in four and half months (i.e. the period of a quarterly report, delivered within 30 business days) and suggested that firms should be required to notify the FCA of a new web domain name within 30 days of registration of the name. Another felt that quarterly reporting is excessive for firms transacting only half a dozen deals a year.

2.18 A respondent suggested that the FCA should publish the list of domain names supplied by the relevant brokers. It also called for the FCA to publish guidance for lenders on the steps that it expects them to take to monitor compliance with the rules.

2.19 A respondent argued that there should be an exemption or amendment to the rules to cover the direct promotion of single credit products by intermediaries. They felt that the 'broker not lender' statement may confuse customers in such cases.

6 As defined in the Glossary of terms in the FCA Handbook.

7 CONC 3.4.1R(2), see Chapter 4 of this document.

Our response

The following explains our decisions on the points raised by respondents.

Placement/prominence: CONC 3.7.7R requires the 'broker not lender' statement to be prominent. CONC 3.7.8G gives guidance on this rule, that a statement will not be treated as prominent unless it is presented, in relation to other content of the promotion, in such a way that it is likely that the attention of the average person to whom it is directed would be drawn to it.

Customer consent: CONC 2.5.3R(4) requires brokers to obtain customer consent before referring them to a third party which carries on regulated activities, a claims management service or other services. CONC 2.5.3R(5) to (9) and 2.5.8R(21) impose further requirements as regards customer consent to the processing of personal data.

Rule consistency between sectors: The consumer credit sector is very diverse, as is the wider financial services market. As a regulator, we aim to ensure that all financial markets work well and that consumers are appropriately protected. In determining what protection is appropriate, we must consider the differing degrees of risk involved in different kinds of transactions, and the differing degrees of experience and expertise consumers may have and their need for information or advice that is timely, accurate and fit for purpose. We must also have regard to the regulatory principles in FSMA, which include that burdens should be proportionate to expected benefits and the desirability of considering the differences in the nature or objectives of businesses carried on by regulated firms. Our Principles for Businesses set out the high-level standards that apply across the board, but regulation must be adapted to the relevant market. In our view, it would not be consistent with our statutory duties to apply the same detailed rules across all sectors.

Limited space: As explained in Chapter 4 of this document, we have removed the limited space exemption in CONC 3.4.1R(2). For the same reasons, we do not consider it appropriate to confer an equivalent exemption for the rules published in PS14/18.

Quarterly reporting: The requirement is a balance between not overloading firms with our requirements and having enough timely information to ensure we can supervise firms effectively within our risk appetite. It is our view that the balance is currently right. However, we are considering a number of options for the future. In the meantime, we would remind firms that the requirement to notify quarterly is in addition to the SUP 16.10.4R requirement for authorised firms to submit Standing Data to the FCA; this includes website information. SUP 15.5.1R also requires firms to give the FCA reasonable advance notice of a change in any business name.

Promotion of single products: The rule in CONC 4.4.3R is about the information notice. It is open to the firm to make clear in an accompanying email or letter, or in prior advertising material, that it is operating on behalf of a specific lender and is offering products only of that lender, and CONC 3.3.2R requires firms to specify the name of the lender where known.

Cancellation rights

2.20 One respondent was not confident about the current level of consumer awareness of cancellation rights. They felt that there should be a requirement to inform consumers explicitly of their rights when a credit broking contract is entered into.

Our response

Our view is that the existing rules are sufficient.

CONC 11.1.6R requires the firm to disclose to a consumer in good time before (or, if that is not possible, immediately after) the consumer is bound by a contract to which the right to cancel applies under CONC 11.1.1 R, and in a durable medium, the existence of the right to cancel, its duration and the conditions for exercising it.

CONC 6.8.4AR specifies that if a customer has not entered into a relevant agreement within six months of an introduction to a potential source of credit, the firm must – as soon as reasonably practicable after the expiry of that six-month period – by any method, clearly bring to the customer's attention the right to request a refund under section 155 of the Consumer Credit Act (CCA) and how to exercise this right.

Reporting requirements

Q2: Do you agree with our proposed minor amendment to the reporting requirements?

2.21 We proposed making submission of the CCR008 return (domain names) via GABRIEL, rather than by other means, mandatory for authorised firms. We also proposed to align the reporting dates with standard GABRIEL reporting dates.

2.22 There were no objections to the proposed amendments. More general comments about the frequency of reporting and publication of domain names have been addressed under Q1 above.

Our response

We have proceeded with our proposal to align the reporting dates. However, we have decided to delay our plan to make GABRIEL reporting mandatory, pending further consideration of the wider issues discussed later in this chapter.

Fully authorised firms are encouraged to report via GABRIEL if the return appears on their schedule, but all firms can still report via email, fax, post or by hand.

Other changes to CONC rules

Q3: Do you have any comments on our proposed minor changes to the CONC rules on credit brokers?

2.23 There were no objections to the proposed minor changes to CONC rules.

2.24 In relation to CONC 2.5.8R(20), a respondent asked for 'payment account' to be made a defined term to ensure that the scope is clear.

2.25 In relation to CONC 6.8.4R, a respondent agreed with the insertion of the word 'promptly' but was concerned that this is open to misinterpretation. They recommended that firms be required to respond to a request for a refund within 14 days and where appropriate make a refund payment within 28 days.

2.26 Another respondent asked that CONC 6.8.4R be amended to ban the practice of credit brokers negotiating a partial refund of upfront fees with consumers in exchange for immediate repayment (rather than refunding the consumer in full). They cited evidence to suggest that this practice is occurring when the consumer has told the broker that they want to exercise their right to cancel within the 14-day cooling-off period.

2.27 A respondent agreed with the proposed change to CONC App 1.2.3R but requested that the rule be amended to clarify that this is only in relation to a fee paid for credit and not any other fee (such as a 'reservation fee' for goods/services which is charged regardless of whether the customer is paying on credit). Another respondent stated that lenders will only be able to reflect in the APR such brokerage fees as have been advised to them by the introducing broker, and so any failure by the broker to disclose the fee should not impact on the lender or the enforceability of the credit agreement.

2.28 Another respondent also welcomed the proposed change to CONC App 1.2.3R but wanted to know how the FCA suggests that the cost of premium rate telephone calls should be factored into APRs and how lenders and brokers should make clear to the consumer which part of the APR is the cost of the loan and which part is the broker fee.

Our response

We have made the rules consulted upon, subject to one clarificatory change.

Payment account: The Payment Services Regulations (PSRs) define a 'payment account' as "an account held in the name of one or more payment service users which is used for the execution of payment transactions". We have clarified in the instrument that 'payment account' has the same meaning as in the PSRs.

Quantifying 'promptly': We do not agree with the suggestion to quantify 'promptly' as a response within 14 days and refund within 28 days. A problem with specifying a figure is the temptation to use that figure as a standard. We would expect firms, in applying the Principle 6 requirement to treat customers fairly, not to delay refunds unnecessarily. If a firm is able to take payment from a customer quickly (for example, within two hours), we would question why a refund should not be given within a similar timeframe.

Partial refunds: We are concerned to hear about the practice of negotiating partial refunds. It is our view that this is a breach of section 155 and our rules where the consumer is entitled to a full refund.

Request for clarity: CONC App 1.2.3R already states that the total cost of credit to the borrower does not include charges which the borrower is obliged to pay whether the transaction is effected in cash or on credit. CONC 4.4.2R(3) requires the broker to notify any fee to the lender so that it can be included in the APR.

Premium rates: A premium rate call has a similar effect as a broker fee and is part of the total charge for credit as it has to be paid in order to access credit via the broker. As such, it should be factored into the APR for the credit agreement. We would expect the broker to notify the existence and amount of the charge to the lender, so that it can be included in the APR. We would also expect a lender who is aware that business is being procured through the use of premium rate calls to proactively establish the cost, or typical cost, of a call, and to reflect this in the APR.

APR breakdown: There is no requirement to break the APR down between the cost of the loan and a broker fee. However, the existence and amount of any non-interest charges within the total charge for credit must be stated in the pre-contract information and credit agreement (and in advertising as part of the representative example if required).

Our future policy on credit broking

Q4: Do you have any views on remuneration processes for brokers, or on the specific issues raised in this chapter?

2.29 We sought views and evidence more generally on wider issues relating to credit broking including appropriate forms of remuneration, disclosure of fees and commissions and the timing of fee payments. In the sections below, we give our response to the consultation responses received.

Appropriate forms of remuneration

2.30 The consultation highlighted various remuneration models and invited views on their appropriateness, risks, advantages and disadvantages.

2.31 While some respondents suggested that there is equal room for both fee and commission models, subject to adequate disclosure, there was an almost even split between those who favoured fee models or commission models.

2.32 All responses that commented on the use of premium rate services were opposed to this. One respondent expressed support for the principle of remuneration through the price of goods and services, subject to clarity and transparency.

2.33 In general, respondents emphasised the importance of understanding business models in the wider credit broking market, such as the broking of loans to small or medium-sized enterprises, and not applying a 'one size fits all' approach. It was argued that there are few problems outside the high-cost short-term credit (HCSTC) sector, and caution was required to avoid unintended consequences.

Disclosure of fees/commissions

2.34 While some respondents suggested that the existing rules on disclosure of fees/commissions are adequate, others argued that they should be modified.

2.35 A few responses referred to the Plevin judgment.[8] Most cautioned against applying this to all credit broker situations, although one respondent asked that the FCA consider amending CONC 4.5 to require all lenders and brokers to disclose commission in all circumstances for credit and any ancillary services funded by the credit agreement.

Timing of fee payments

2.36 While some respondents expressed opposition to upfront or advance fees, others expressed support. An upfront fee is a fee before a brokerage contract has been entered into and the contracted service has been provided, and an advance fee is a fee before a credit agreement is entered into.

2.37 Those who expressed opposition all felt that fees should not be charged until a service has been provided to the consumer. Some respondents did not define what they meant by a 'service', but most made it clear that, in their view, this means successfully securing a credit agreement.

2.38 Those who expressed support felt that that there is some justification for upfront or advance fees – for example, if the broker is a member of a recognised trade body with a defined code of practice. It was argued that some brokers (such as commercial finance brokers) have to carry out a lot of work including reviewing business plans and providing advice before matching the client with a provider, and that firms may be unable to offer their services to some clients if they are not allowed advance fees.

Our response

Appropriate forms of remuneration: We note the mixed views on fees and commissions. The views on some of the other remuneration models are clearer, in particular in relation to use of premium rate services. New FCA rules ban premium rate calls following entry into a contract for the provision of credit broking services[9] and there may be merit in considering restrictions more widely. We are aware of a recent Tribunal decision in a case brought by PhonepayPlus.[10]

Disclosure of fees/commissions: The FCA is still considering its response to the Plevin judgment, and we will have regard to this when considering whether to amend or extend the existing CONC rules. CONC 4.5 requires disclosure of a commission payable to the credit broker by the lender, or by a third party (such as an insurer), in relation to a credit agreement where knowledge of the existence or amount could affect the broker's impartiality or have a material impact on the customer's transactional decision.

Timing of fee payments: It is clear from responses that most references to upfront fees actually mean advance fees. Banning advance (as opposed to upfront) fees would require legislative change, given that section 155 of the

8 In *Plevin v Paragon Personal Finance Limited [2014] UKSC 61* the Supreme Court decided that under section 140A of the CCA, non-disclosure of excessive commission in relation to a payment protection insurance policy sold alongside a loan rendered the relationship between the lender and the consumer unfair.

9 *Improving complaints handling, feedback on CP14/30 and final rules, PS15/19*, July 2015, Chapter 3.

10 PhonepayPlus is the UK's independent regulator of premium rate services – https://www.phonepayplus.org.uk/~/media/Files/PhonepayPlus/Adjudications/0001Tribunal_decisions/Tribunal-minutes-63304.pdf

CCA provides for a credit broker to charge a fee following an introduction, subject to the right to a refund less £5 if no credit agreement is entered into within six months of the introduction.

The way forward: While the responses have given us food for thought, they do not provide enough information to develop an informed view on what the appropriate remuneration models for credit brokers should be and how they should be disclosed.

Before proposing any other significant policy action, we consider it important to conduct some further analysis to understand the range and impact of different remuneration models. This supports the regulatory principle in section 3B of FSMA, namely the desirability of the FCA exercising its functions in a way which recognises differences in the nature and objectives of businesses carried on by different persons.

We are therefore planning to commission some work to help analyse relevant issues across the credit broking market generally. Various external stakeholders have offered to engage with us on this, and we intend to take them up on these offers.

This will help us to consider whether there are gaps in the current rules that need filling, and whether additional rules are required, and if so, in what areas.

We will also undertake an impact assessment in Q1 2016. The trend of consumer harm, as evidenced by the April assessment, appears to be downward but the further assessment should help establish whether this is continuing or whether new problems have emerged, potentially requiring further regulatory intervention.

In the meantime, supervisory and enforcement action will continue to be taken where appropriate if firms breach our rules or engage in unauthorised broking activity.

3. Lending issues

3.1 This chapter summarises feedback on Q5 to Q8 in Chapter 3 of CP15/6 and our responses to the issues raised by respondents.

3.2 These are in four sections: guarantor loans; joint borrowers; credit reference agencies; and other lending proposals. Further detail can be found in the table in Annex 2.

Guarantor loans

Q5: Do you have any comments on our proposed changes to CONC rules in relation to guarantor lending, or suggestions for further changes?

3.3 We proposed changes to provide that a guarantor is to be treated as a 'customer' in relation to Principles 6 and 7 and key CONC rules, in particular on pre-contract explanations, creditworthiness assessment and the rules on arrears, default and recovery (including the exercise of forbearance). We also invited views on whether we should consider additional requirements as part of a subsequent consultation – for example, to stipulate when it may be reasonable to seek payment from a guarantor and the steps a lender should take before doing so.

Proposed changes to rules

3.4 In general, responses supported our policy proposals. However, a number of concerns were raised, some of which have caused us to reconsider aspects of the proposals.

3.5 On scope, it was argued that the proposals should not apply to guarantors if they are companies or employers or if the loan is to a company. It was also suggested that the changes be limited to sub-prime or specialist guarantor lending.

3.6 On pre-contract explanations, it was argued that it was sufficient to encourage the guarantor to obtain independent legal advice, and it would be duplicative to require the lender to provide an explanation. It was suggested that this would expose firms to undue legal risk, and could lead firms to reduce lending, with implications for financial exclusion and competition. One respondent argued that it would be impracticable to provide an explanation as it had no direct dealings with a guarantor.

3.7 On creditworthiness, it was argued that firms should not have to make the same assessment of the guarantor as the borrower, or to assess creditworthiness of a business guarantor. Others though argued for the requirements to be enhanced.

Our response

Scope: We accept that the provisions should be limited to guarantors who are 'individuals' and to agreements under which the borrower is an 'individual'. However, we do not otherwise agree that the scope of the provisions should be limited. The rules we consulted on require the guarantor to be treated as a 'customer' for the purpose of key CONC rules and principles; they are not currently so protected. 'Treating customers fairly' should apply across the board, to guarantors as well as borrowers.

Pre-contract explanations: It is important that a guarantor is given an adequate explanation covering the circumstances in which the guarantee or indemnity may be called on, and the implications of this, to enable an informed decision on whether to act as guarantor. We accept, however, that it should be permissible for this to be provided as part of independent legal advice (for example by a solicitor), or by a credit broker, subject to appropriate safeguards. In particular, the lender must take reasonable steps to satisfy itself that an explanation was provided, and was adequate, and that the person giving the explanation had access to the credit agreement and guarantee and any other relevant documentation, to facilitate an adequate explanation.

If the lender provides the explanation, this can be done orally or in writing (or both).

Creditworthiness: In response to the feedback we received, we have clarified that creditworthiness checks may be different for a guarantor than the borrower, reflecting the contingent nature of the liability.

We have otherwise implemented the changes we consulted on.

See also Q5 (Guarantor loans) in Annex 2.

Suggestions for further work

3.8 We did not receive many responses on this aspect, but a number of suggestions were made, and some stakeholders offered to work with us on taking this forward.

3.9 Some respondents suggested elaborating on the requirement for a pre-contract explanation, or requiring additional information or explanation to be provided to the guarantor – for example, in relation to the extent of the potential liability, how quickly the guarantor may be approached if the borrower does not pay, and how payment will be taken. It was also argued that the process relating to execution of the guarantee should be explained, and that firms should be required to evaluate whether the guarantor has been subject to coercion or undue influence.

3.10 Others suggested that the guarantor's potential liability should be limited, for example so that they are not liable for default charges incurred by the borrower.

3.11 It was argued that firms should not be permitted to take money from a guarantor using continuous payment authority (CPA), or should be required to provide prior warning or a default notice. It was also suggested that firms should be precluded from approaching the guarantor for payment unless they have taken reasonable steps to ascertain the reason for the borrower's non-payment, or until a specified period has elapsed.

3.12 In addition, it was suggested that guarantors should be notified if the borrower has failed to make payment, and should be given arrears notices and statements.

Our response

The way forward: We are grateful for the views expressed by respondents. In light of these, we intend to undertake further work to understand better how the guarantor lending market operates, and the risks to consumers (both borrowers and guarantors), and how best these can be addressed – whether through targeted rules and/or supervisory action. We will look at issues both in relation to sub-prime guarantor lending, where concerns have principally arisen to date, and also mainstream lending including guarantees provided in relation to business lending to individuals.

Subject to this further analysis, if we conclude that additional or different rules are needed, we would consult on these.

See also Q5 (Guarantor loans) in Annex 2.

Joint borrowers

Q6: Do you have any comments on our proposed changes to CONC rules in relation to joint borrowers?

3.13 We proposed adding guidance about the provision of adequate pre-contract explanations to, and creditworthiness assessment of, joint borrowers.

3.14 Respondents sought clarity on the scope of the guidance and what we were expecting of firms. It was suggested that applying this to partnerships could constrain the supply of finance to small and medium-sized businesses.

3.15 On pre-contract explanations, it was argued that it was impracticable or unnecessary to give separate explanations to each joint borrower, and that it should not be necessary to determine the level of understanding of each customer.

3.16 On creditworthiness, it was argued that requiring an individual assessment of affordability could lead firms to deny loans to joint borrowers where one customer is not currently in employment and so could not afford the repayments individually.

Our response

Pre-contract explanations: We have amended the guidance in light of consultation responses to clarify that an explanation must be provided to each customer, but that firms should consider whether it may be appropriate to give explanations separately to each customer (rather than jointly) and whether, if separate, the explanations should be the same or different. In deciding this, the firm should have regard to relevant factors, to the extent these are evident and discernible.

Creditworthiness: We have clarified that the firm should consider whether it may be appropriate to assess each customer separately (as well as collectively), having regard to the risk to that customer were they to become solely responsible for the debt. We do not expect a firm to be satisfied that each joint borrower can afford the loan individually on current income, but it should not ignore evidence that the loan would not be sustainable. In addition, firms should exercise appropriate forbearance in the event that the loan becomes unaffordable for one or more of the customers.

Partnerships: We recognise that it will generally be appropriate to treat a partnership as a single 'customer' for these purposes, and have amended the guidance accordingly. However, there may be circumstances in which a firm could be in breach of Principle 6 (treating customers fairly) if it did not have regard to the position of the individual partners. Firms should consider what is appropriate in each case.

See also Q6 (Joint borrowers) in Annex 2.

Credit reference agencies

Q7: Do you agree with the deletion of CONC 9 on credit reference information?

3.17 We proposed removing CONC 9, which requires credit reference agencies (CRAs) to notify any person to whom the CRA provided information about the individual within the previous month if the information is amended or removed.

3.18 Most respondents supported the proposal, on the grounds that the provision no longer serves any useful purpose, but a small number of respondents objected. They argued that incorrect CRA data can impact on account management, and in areas outside credit, and so there should be an obligation on CRAs to notify previous recipients.

Our response

Wider use: We appreciate the arguments, but do not consider that the potential benefits outweigh the costs, including to recipients of the information. It is open to the consumer to bring the amended information to the attention of persons whose decisions might be materially affected. There is no requirement generally under data protection legislation to notify previous recipients of incorrect data, unless ordered by a court.

See also Q7 (Credit reference agencies) in Annex 2.

Other lending proposals

Q8: Do you have any comments on our proposed changes to other rules for lenders and guidance for firms?

3.19 We proposed various changes to other lending rules and guidance. In general, respondents supported our policy proposals, but some raised concerns or sought clarification on aspects of the proposals.

3.20 On pre-contract explanations, some questioned the list of factors to be taken into account by firms, and in particular reference to the customer's 'sophistication'.

3.21 On creditworthiness, a number of respondents argued that it was inappropriate to require default charges to be taken into account in the assessment. It was also pointed out that the reference to credit brokers in CONC 5.2.4G was inappropriate as the obligation to assess creditworthiness falls solely on the lender.

3.22 There were also comments in relation to unenforceability, and PERG guidance.

Our response

Pre-contract explanations: Having reflected on the feedback received, we have amended the guidance to remove reference to 'sophistication' and have instead enhanced the existing reference to the customer's level of understanding, to the extent this is evident and discernible. We would note that firms are expected to have regard to such factors only to the extent that it is appropriate to do so.

Creditworthiness: Our proposal was not intended to imply that default charges should be factored into the assessment, but rather that high default charges may increase the risk to the customer if the loan becomes unaffordable, and so may be a factor in determining the extent and scope of an assessment. We accept however that the proposal has given rise to some confusion, and on reflection have decided to leave this to our wider work on creditworthiness (including affordability). We have removed the reference to credit brokers in relation to creditworthiness requirements.

Other changes: We have amended CONC 13.1.6G to clarify that it does not apply to a monthly or annual statement which does not constitute a request for payment. We have also amended the PERG guidance in line with the policy intention.

We have otherwise implemented the changes we consulted on.

See also Q8 (Other lending proposals) in Annex 2.

4. Financial promotions

4.1 This chapter summarises feedback on Q9 to Q13 in Chapter 4 of CP15/6 and our responses to the issues raised by respondents.

4.2 These are in five sections: the high-cost short-term credit (HCSTC) risk warning; clear, fair and not misleading; prominence; the representative APR; and other financial promotion proposals. Further detail can be found in the table in Annex 2.

HCSTC risk warning

Q9: Do you agree with the removal of the exemption from the HCSTC risk warning requirement?

4.3 We proposed removing the exemption from the requirement to include a risk warning in promotions for high-cost short-term credit where – owing to space constraints – it is not reasonably practicable to include one.

4.4 Most respondents strongly supported the proposal, but a few (principally HCSTC lenders) were opposed, arguing that it is impracticable to include the risk warning in certain media such as SMS text messages and tweets, and that removing the exemption supports incumbents at the expense of new entrants and start-ups.

Our response

We do not agree that the exemption should be retained, or that its removal would significantly increase costs for firms or barriers to entry or expansion. The circumstances where it might be impracticable to include the risk warning are extremely limited, given in particular the scope for 'SMS concatenation' and embedding images in tweets, and it is open to firms to advertise in a way that does not require inclusion of the risk warning. We have seen evidence of firms abusing the exemption or acting in ways that undermine the consumer protection objective of the risk warning.

We have therefore proceeded with our proposal to remove the exemption.

See also Q9 (HCSTC risk warning) in Annex 2.

Clear, fair and not misleading

Q10: Do you have any comments on our proposed changes in relation to 'clear, fair and not misleading'?

4.5 We proposed elevating guidance on 'clear, fair and not misleading' to a rule, with some amendments to the text.

4.6 Respondents were generally supportive, but some argued that the concept is too subjective to justify making it a rule, and that this increases regulatory uncertainty. They called for the FCA to take a balanced approach to supervision. Clarification was sought on elements of the provisions, with a request for further guidance to assist firms.

Our response

We have proceeded with the proposal, which replaces the previous guidance with a rule that supplements the high-level Principles and the rule at CONC 3.3.1R. We think this gives greater clarity to the rules, and will increase both regulatory certainty and protection for consumers. We have however moved the provision into CONC 3.3.1R so that it is subject to the existing 'reasonable steps' defence.

We may consider additional guidance as part of a future consultation.

See also Q10 (Clear, fair and not misleading) in Annex 2.

Prominence

Q11: Do you have any comments on our proposed changes in relation to prominence?

4.7 We proposed amending requirements for information to be 'more prominent' to 'no less prominent', and clarifying the meaning of 'prominence'.

4.8 Respondents were generally supportive, but some argued for less prescription or for additional clarification of how firms should apply the requirements.

Our response

We have proceeded with the proposals, which are consistent with the Consumer Credit Directive (CCD) but enable firms to comply more easily (for example, by removing the requirement for *greater* prominence in certain media such as radio). This should reduce costs to firms, without any material reduction in consumer protection.

See also Q11 (Prominence) in Annex 2.

Representative APR

Q12: Do you have any comments on our proposed changes to the triggers for a representative APR?

4.9 We proposed amending the circumstances in which financial promotions must include a representative APR, to clarify the provisions and enhance regulatory certainty for firms.

4.10 Respondents were generally supportive, but some argued for additional clarity, possibly in the form of examples of statements that would (or would not) require inclusion of a representative APR. It was also noted that aspects of the proposals appeared inadvertently to expand the scope of the requirement.

4.11 A request was made for an exemption from the requirement for community development finance institutions (CDFIs), given the nature of their activities.

Our response

We have amended the provisions, in light of the feedback, to clarify that a 'comparison' for these purposes means a comparison relating to the credit (rather than for example the goods or services financed by the credit), in line with the policy intention. We have also clarified the basis for calculation of a representative APR.

We are minded to consult in December on an exemption for community finance organisations (CFOs) from the representative APR requirement (but not from the requirement for a representative example, including a representative APR, which is required by the CCD). CFOs are exempt from the HCSTC rules on the basis that (like credit unions) they are constituted to serve a social purpose.

See also Q12 (Representative APR) in Annex 2.

Other financial promotion proposals

Q13: Do you have any comments on our proposed changes to other rules and guidance on financial promotions?

4.12 We proposed various changes to other financial promotion rules and guidance. In general, respondents supported our policy proposals, but some raised concerns or sought clarification on aspects of the proposals.

4.13 Some respondents were strongly opposed to the proposed change to the guidance on the conditions requiring inclusion of a representative example, arguing that 'interest free' is not a statement of a rate of interest. It was argued that, where credit is free of interest and charges, a representative example has no value to consumers and amounts to information overload.

4.14 There was concern that the proposals appeared to imply a ban on pre-approved promotions, even if this was not intended. An exemption was requested for pawnbroking agreements

where the customer's liability is limited to the market value of the item and so no additional creditworthiness checks are required.

4.15 It was noted that the guidance on calculation of the representative example does not fully reflect the relevant requirements, and could be enhanced.

4.16 It was argued that the requirement to state the lender's name in a financial promotion was problematic for credit brokers with a panel of lenders.

Our response

'Interest-free credit': Having reflected on the feedback received, we are minded to consult (in December) on exempting promotions from the requirement for a representative example or APR where the credit is free of all interest and charges (in accordance with CONC 3.5.12R). We accept that this is permissible under the CCD, and that the information is unlikely to be of particular benefit to consumers in such cases. In the meantime, we have not made the change consulted on. We cannot provide an exemption without further consultation and cost benefit analysis (CBA) given that we did not consult on it specifically in CP15/6.

'Pre-approved' promotions: We have amended the guidance on 'pre-approved' and 'guaranteed' promotions to clarify its application, but making clear there must already have been an assessment of creditworthiness or affordability in line with CONC 5 (and a fresh assessment may be needed if there is a material change in circumstances).

We have added an exemption for certain pawnbroking agreements, subject to conditions matching those in CONC 5.

Other changes: We have amended and expanded the guidance on the representative example to clarify its application and the basis on which firms should determine what is 'representative'. We have not amended the requirement to state the lender's name in a credit broking promotion, but would note that this applies only if the identity of the lender is known at that point.

We have otherwise implemented the changes we consulted on.

See also Q13 (Other financial promotion proposals) in Annex 2.

5.
Debt issues

5.1 This chapter summarises feedback on Q14 to Q18 in Chapter 5 of CP15/6 and our responses to the issues raised by respondents. These concern referrals to debt advice, exercise of continuous payment authority (CPA), duration of debt management plans, complaints procedures and other minor debt-related proposals.

5.2 Having given due regard to the responses we received we are not making any changes to our proposals. Further detail can be found in the table in Annex 2.

Referrals to debt advice

Q14: Do you have any comments on our proposed changes to guidance regarding referrals to debt advice?

5.3 We consulted on amending CONC 7.3.7G, which states that, where appropriate, firms should refer a customer in default or arrears difficulty to a source of free and independent debt advice. By this, we mean a source of not-for-profit debt advice, but firms can in addition make a referral to other FCA-regulated firms with debt counselling permissions.

5.4 Most respondents supported the proposed clarification, but some opposed it, arguing that the proposal made an unjustified distinction between profit-seeking and not-for-profit business models and could harm the provision of free debt advice.

5.5 Others argued that a referral to a not-for-profit debt advice body should be clearly differentiated from referrals to other sources of debt advice, and firms should not prioritise referrals to debt advice providers with whom they have commercial relationships.

5.6 One respondent argued that the proposal was not compatible with the FCA's competition objective and noted that it was not accompanied by a cost benefit analysis.

Our response

The guidance we consulted on reflects the policy intention that debtors should be made aware that free debt advice is available from not-for-profit debt advice bodies. This intention underlies a number of other provisions in our Handbook. The provision is guidance, not a rule, and is explicitly worded in such a way as to

avoid being misread as interfering in the ability of creditors to form appropriate referral relationships, as had been inferred from the previous guidance.[11]

Firms are obliged to be clear, fair and not misleading in communications with customers and this would apply when making referrals to not-for-profit debt advice. We do not feel it is necessarily inappropriate for a firm to prioritise referrals to a debt advice provider with whom they have a commercial relationship. We would note that prioritisation in this context may include 'hot-keying' customers' calls to not-for-profit or commercial debt advice providers, something we would not wish to discourage where it is in customers' interests.

The proposal is intended to further our consumer protection objective and so is required to be compatible with our competition duty. As it does not prevent creditors referring customers to appropriate sources of debt advice we are satisfied that it is consistent with the duty. As it is guidance, there is no requirement to carry out a cost benefit analysis although as a matter of policy the FCA will carry out such an analysis where it expects proposed guidance to materially affect firm behaviour. We do not expect this guidance to have such an effect.

The provisions include a reminder that firms making referrals to sources of debt advice in addition to a not-for-profit debt advice body should only do so where it is compatible with their wider regulatory obligations.

See also Q14 (Guidance on referrals to debt advice) in Annex 2.

Exercise of continuous payment authority

Q15: Do you have any comments on our proposals to allow the introduction of CPA without a modifying agreement in certain circumstances?

5.7 We proposed an amendment that, where use of CPA was not included in the original credit agreement, would allow lenders (and debt collectors acting under an arrangement with a lender) to introduce it as a debt collection mechanism if the lender is exercising forbearance to a customer in arrears or default, without this requiring a modifying agreement under section 82 of the CCA.

5.8 We received a range of responses from firms including lenders, trade bodies and not-for-profit debt advice bodies. Most respondents were in favour, with a small number expressing opposition.

5.9 A number of respondents noted the proposed requirement for information and explanations to be in a durable medium, and with a reasonable opportunity for the customer to consider these, and questioned whether this could prevent setting up a CPA over the telephone using the mechanism we proposed.

11 Further information on the role of guidance can be found at page 24 of the FCA Handbook Reader's Guide: http://www.fca.org.uk/your-fca/documents/handbook/handbook-readers-guide

5.10 Other respondents suggested that the proposal could exacerbate financial difficulties of customers who agree an unaffordable repayment plan.

5.11 A number of respondents proposed that we should place the same restrictions on CPA that apply to HCSTC products where CPA is introduced under our proposal.

5.12 Several respondents suggested that we should extend the proposal to include customers who are in pre-arrears financial difficulty.

Our response

Our proposal does not prevent an arrangement being set up over the telephone but it is unlikely that it will be possible to do so in one phone call. Given the significant power that CPA gives over a customer's bank account, we believe it is proportionate to require a reasonable time for customers to consider the information. Information must be provided in a durable medium which includes email or text, for example, and so does not necessarily make agreeing the use of CPA a disproportionately difficult process.

The issue of unaffordable repayment plans is not directly related to the method of making repayments and we do not expect that introducing CPA makes an unaffordable repayment agreement more likely. In some circumstances a CPA may limit the consequences of a missed payment as direct debits are more likely to see unpaid item charges levied by the customer's bank.

The restrictions that apply to the use of CPA in HCSTC agreements would apply if a firm were to use our proposal to introduce CPA to such an agreement. Those restrictions were put in place to address specific evidence we had of abuse in the HCSTC sector. At this point we have no evidence of similar misconduct in other consumer credit sectors but we will consider the issue if we become aware of such evidence.

We understand the logic behind the argument that the proposal should apply pre-arrears, in seeking to prevent small financial problems escalating. In practice, however, the issues are different and it is not immediately clear that introducing CPA at this point would make a meaningful difference. There is also a danger that such a mechanism would allow firms to much more easily introduce CPA without a customer being in crystallised financial difficulty and without offering forbearance.

See also Q15 (Use of CPA where it is not specified in the original credit agreement) in Annex 2.

Duration of debt management plans

Q16: Do you have any comments on our proposal to add guidance on the duration of debt management plans?

5.13 We consulted on proposed guidance that would remind firms carrying out debt counselling that the prospective duration of a recommended debt solution is a relevant factor in complying with our high-level Principles for Businesses.

5.14 This proposal received wide support, with only one respondent opposing it on the grounds that, while the principle behind the proposal was correct, it was unnecessary to spell it out.

5.15 Some respondents suggested that the FCA should offer guidance on how a firm should proceed where a customer is insistent that they want a long duration debt management plan against the firm's advice.

5.16 Others asked whether we would provide guidance on the maximum length of a debt management plan.

5.17 One respondent suggested that the issue only exists with the commercial debt management sector.

Our response

Our expectations where a firm is dealing with an insistent client are no different from where the customer is following the firm's advice: firms should ensure they are complying with all of their regulatory obligations, including those regarding record keeping. Our rules regarding the ongoing administration and review of debt management plans would continue to apply in any case.

While there may be merit in proposing guidance on the maximum length of a debt management plan, the evidence is not yet conclusive. For example, there are some circumstances where a longer debt management plan may be in the customer's interests such as if their finances are reasonably expected to improve in the foreseeable future and the firm can justify that expectation. We will keep the issue of long duration debt management plans under review as part of our ongoing supervisory work.

We have encountered long duration debt management plans in all sectors of the market. Our debt advice rules apply in the same way to all debt advice providers regardless of their business model.

See also Q16 (Duration of debt management plans) in Annex 2.

Not-for-profit debt advice bodies and awareness of complaints procedures

Q17: Do you have any comments about our proposals to amend rules relating to not-for-profit debt advice bodies and referring customers to information about complaints procedures?

5.18 The proposal we consulted on in CP15/6 was to amend a rule in the Complaints sourcebook (DISP) to allow not-for-profit debt advice bodies to make a referral to information about complaints procedures orally at the first point of contact, with a further referral required in the first subsequent written communication if there is one.

5.19 Responses to this question were uniformly supportive although we received a comment that the same considerations would apply more generally.

Our response

Specific issues were raised regarding the situation of not-for-profit debt advice bodies in relation to this rule, in particular their inability to recoup the additional costs from customers as these firms do not charge fees. We are not persuaded that the rule is a disproportionate burden on other types of firm.

See also Q17 (Amendment of DISP in relation to not-for-profit debt advice bodies) in Annex 2.

Other minor debt-related proposals

Q18: Do you have any comments on our other proposals relating to debt?

5.20 We consulted on three minor proposals in relation to debt in CP15/6:

- to italicise the word 'person' in CONC 7.13.3R to match the Glossary definition of the term
- to amend the headings of the Arrears Information Sheets which must accompany notices of sums in arrears relating to peer-to-peer agreements, and
- to amend the rules to reflect our policy intention by removing the requirement that debt advice must be provided in a durable medium where the firm has not entered into a contract with a customer and is satisfied that it is unlikely to do so

5.21 We only received comments in relation to the third proposal, with all respondents expressing support.

5.22 A number of respondents requested that the FCA provide an explanation of when an agreement in relation to debt advice will be a contract.

5.23 Others suggested that the FCA provide a list of circumstances where it would be appropriate for firms to issue debt advice in a durable medium (in circumstances where it is not required).

Our response

Broadly speaking, it is unlikely that an agreement to provide debt advice or related services where there is no consideration from the customer to the firm would constitute a contract, but a firm in any doubt should seek its own legal advice.

We believe firms should be able to use their own discretion and judgement to decide whether it is in their customers' interests to have debt advice confirmed to them in writing even where it is not required.

See also Q18 (Other minor debt-related proposals) in Annex 2.

6. Cost benefit analysis and equality impact assessment

6.1 The instrument published in the Appendix to this policy statement does not differ from the instrument published for consultation in Appendix 1 to CP15/6 in a way which is, in our view, significant. We are therefore not required by section 138I(5) of FSMA to publish details of the difference and a cost benefit analysis (CBA).

6.2 In this chapter we summarise the comments we received on the CBA in the consultation paper and our responses.

Credit brokers

6.3 As explained in paragraph 2.16 of CP15/6, we did not prepare and publish a CBA for the rules published in PS14/18 before making them, for the reason given in paragraph 2.2 of CP15/6. However, as part of the decision-making leading to the new rules, we did assess the expected costs and benefits of the rules in order to satisfy ourselves on proportionality. We published information in relation to that assessment in Chapter 2 of CP15/6.

6.4 Some respondents stated that the costs and benefits associated with the FCA's intervention, as detailed in the consultation, support the action taken against the segment of the credit broker market where customers were paying upfront fees to credit brokers. However, they noted that the PS14/18 rules extend beyond this segment and impact all credit brokers with respect to financial promotions and cancellation rights. They were not convinced from the description of the benefits in the CP whether any extend beyond the fee-charging segment of the market.

6.5 A respondent stated that the FCA analysis suggests that the potential benefits from the changes to the credit broking rules could be as low as 8%. They queried that rule changes would need to be supported by incremental supervisory and enforcement action. They appreciated that both supervision and enforcement are areas requiring a high level of confidentiality, so details must necessarily be restricted, but queried the effectiveness of current regulation.

6.6 A respondent suggested that the analysis should have considered whether the same or greater benefits could have been achieved, and sooner, via direct enforcement action using existing FCA powers. They felt that the one-off costs suggested in the analysis appeared to significantly underestimate the cost to industry of the new rules.

6.7 We note this feedback, and will continue to keep the efficacy and effect of the rules under review. The rules, targeted at ensuring that key features of brokers' relationships with consumers are transparent, were needed to achieve an appropriate degree of protection for consumers and prevent ongoing harm. They were not introduced in isolation but were (and are) supported by ongoing supervisory and enforcement action. As set out in Chapter 2 of this policy statement, the initial indications are that they have been effective, and have equipped the FCA with stronger supervisory and enforcement tools with which to challenge poor practice in firms.

Guarantor lending

6.8 Concerns were expressed regarding the application of the proposals to mainstream guarantor lending, given that the FCA's survey of firms appeared to have been limited to specialist guarantor lenders, primarily serving the sub-prime market. There were particular concerns in relation to the scope of the proposals and the requirement for an adequate pre-contract explanation to be given to the guarantor. There was also a question about the level of creditworthiness assessment expected.

6.9 These are addressed in Chapter 3 of this policy statement. On scope, we have amended the provisions so that they do not apply to guarantors which are not 'individuals' or in relation to lending to borrowers who are not 'individuals'.

6.10 On explanations, we have amended the provisions to enable the explanation to be provided by a solicitor or barrister, or by a credit broker, subject to appropriate safeguards. We have also clarified that an explanation can be written or oral.

6.11 We understand that in the mainstream market, guarantors are frequently advised (or required) to obtain independent legal advice, so an explanation can be provided as part of that (subject to the lender being reasonably satisfied that an explanation was provided and was adequate). We further note that, under the Lending Code, subscribers are required to provide information to the guarantor (including on the extent of their liability) and to explain relevant features upon request (even if the person has obtained independent legal advice).

6.12 On creditworthiness, we have clarified that the creditworthiness assessment for a guarantor does not have to be the same as for the borrower. As noted in the CBA, lenders are likely to have strong incentives to assess the guarantor's creditworthiness in any event, and they must assess the borrower's creditworthiness in addition (but we do not prescribe what checks must be made or what information must be sought).

6.13 We remain of the view, therefore, that our proposals (as modified) are unlikely to result in costs of more than minimal significance.

Financial promotions

6.14 Concerns were expressed in relation to removing the HCSTC risk warning exemption and the proposed guidance on 'interest free' credit (see Chapter 4).

6.15 On the former, we remain of the view that removing the exemption will not significantly increase costs for firms or barriers to entry. We note that the circumstances where it might be impracticable to include the risk warning are extremely limited, given in particular the scope for 'SMS concatenation' and embedding images in tweets. In addition, it is open to firms to advertise in a way that does not require inclusion of the risk warning, for example by taking advantage of the 'image advertising' exclusion or by including a link to a website with the promotional material.

6.16 On the latter, we recognise the concerns, and have decided not to proceed with the change we consulted on. Instead, we intend to consult subsequently on a proposed exemption for promotions from the requirement for a representative example or representative APR where the credit is free of all interest and charges.

Continuous payment authority

6.17 A number of respondents argued that our CBA did not adequately consider the potential costs to consumers of firms misusing CPA as a result of our proposal.

6.18 Against the baseline of the status quo at the time we wrote the CBA, we would not expect a large degree of incremental harm to customers. At the time, most of the market was using CPA to take repayments even where its use had not been specified in the original credit agreement. Only the most risk-averse firms were compliant and, in principle, these are the firms that are least likely to misuse CPA. In addition, using CPA in a way which was not agreed with a customer is likely to be a breach of our rules. As such we do not intend to change the CBA.

6.19 We are conscious that – if misused – CPA can cause significant issues for consumers. We will monitor evidence received from consumer complaints and intelligence from consumer groups for any issues developing in this area.

6.20 One respondent felt that we should have carried out a CBA when turning the OFT guidance on CPAs into FCA rules, arguing that our rules went further than the previous OFT guidance. Specifically, the respondent argued that, before April 2014, creditors did not have to specify the terms of use for CPA in the original credit agreement provided that it was not abused. This is a misunderstanding of the position under the previous OFT guidance which from November 2012 required that the terms of use for CPA must be included in the credit agreement.

Referrals to sources of debt advice

6.21 One respondent argued that we should have included a CBA on our proposal to amend guidance on referrals to sources of debt advice. This is based on a misunderstanding of our proposal. We proposed to amend guidance, on which there is no requirement under FSMA to carry out a CBA. Nevertheless, we carried out a short survey of lenders, none of whom expected the change to have a significant effect on their behaviour. We decided therefore to proceed without a CBA, a decision we continue to stand by.

Equality impact assessment

Introduction

6.22 We are required under the Equality Act 2010 to consider whether our proposals could have a potentially discriminatory effect on groups with protected characteristics (age, gender, disability, race or ethnicity, pregnancy and maternity, religion, sexual orientation and gender reassignment). We are also required to have due regard to the need to eliminate discrimination and to advance equality of opportunity when carrying out our activities.

6.23 Annex 4 to CP15/6 contained an equality impact assessment. Our initial assessment was that the proposals we were consulting on built on the package of measures introduced in April 2014. In CP13/10[12] we noted that consumers, including the protected groups, would benefit in a range of ways, including better treatment by firms and better choice of products which meet their needs.

6.24 Our assessment in preparing the consultation was that in the most part our proposals would have minor impacts on protected groups but would generally provide greater clarity for consumers on some key matters, as well as assisting firms. We have considered our proposals in relation to the protected groups and do not believe that they will have a particular impact on those groups.

12 *Detailed proposals for the FCA regime for consumer credit (including feedback to FSA CP13/7 and the policy statement on high-level rules that we consulted on in FSA CP13/7*, CP13/10, October 2013.

Responses to consultation

6.25 Responses to the equality impact assessment either offered no further comments or agreed with our assessment. One consumer group provided a breakdown of the incidence of protected characteristics in their evidence relating to complaints about credit products.

Our response

As we considered responses and finalised our rules, we have not found any evidence that would alter our original assessment that our proposals will have minor impacts on protected groups but will generally be beneficial to consumers overall.

7. Next steps

Commencement dates

7.1 The rules and guidance in the instrument at Appendix 1 will generally come into effect on 2 November 2015.

7.2 Certain changes come into force on 28 September 2015. These are set out in Annex B, Annex D, Part 1 of Annex E and Annex F of the instrument, and concern:

- amendments to the guidance in COND in relation to the threshold conditions
- amendments to the complaints awareness rules in DISP 1.2 in respect of not-for-profit debt advice bodies
- changes to CONC 7.6 in relation to exercise of a continuous payment authority
- changes to CONC 8.3 in relation to pre-contractual debt information and advice, and
- amendments to the perimeter guidance in PERG

Future consumer credit policy work

7.3 As discussed in earlier chapters of this policy statement, we plan to take forward further work on credit broking and guarantor lending with a view to potentially consulting on new rules and guidance in 2016.

7.4 We have also previously announced:[13]

- a review of how our consumer credit rules apply to cold-calling and unsolicited marketing of credit products and services
- a review of repeat and multiple borrowing in the high-cost short-term credit (HCSTC) market, and
- work on how firms assess creditworthiness (including affordability), with a view to consulting on changes to our rules and guidance

7.5 We will shortly be publishing a consultation paper on the Competition and Markets Authority (CMA)'s recommendations to the FCA in relation to remedies in the HCSTC market following

13 Chapter 7 (Next steps) of CP15/6.

its payday lending market study. This will include proposals for new rules for price comparison websites that offer comparisons of HCSTC products, and our response to other CMA recommendations.

7.6 We are required to review the remaining provisions of the Consumer Credit Act (CCA) and report to Ministers by 1 April 2019. Before that we must publish and consult on an interim report. We are starting preparatory work for this major review, including considering how to involve industry and consumer stakeholders.

Forthcoming consumer credit thematic reviews

7.7 We announced two thematic reviews in our Business Plan for 2015-16:[14]

- **Staff remuneration:** The review will cover a broad range of sectors including firms where consumer credit is secondary to their main business.

  The first stage will review firms' incentives policies, remuneration arrangements and controls. The second stage will involve on-site visits and more detailed testing on a selection of firms. The review work will take place throughout the business year with the findings at each stage shaping our approach.

- **Early arrears management in unsecured lending:** The project will look at early arrears – from the identification of customers in probable difficulties at a pre-arrears stage to the point at which the lender formally defaults the customer and/or 'charges off' the debt.

  The project aims to test whether firms have due regard to the interests of their customers and appropriately exercise forbearance. It will also assess firms to see whether they are compliant with our existing rules and principles, and consider whether good or poor practices are employed.

7.8 More information on both thematic reviews is available on our website.[15] [16]

Credit card market study

7.9 We plan to publish an interim report outlining our interim findings from the credit card market study in autumn 2015.[17]

Authorisation

7.10 The FCA continues to assess the applications of firms with interim permission that apply for full permission, and new applications. Firms started applying for full permission from October 2014 with each interim permission firm allocated to an application period.[18]

14 http://www.fca.org.uk/news/our-business-plan-2015-16
15 http://fca.org.uk/news/tr-early-arrears-management-in-unsecured-lending
16 http://fca.org.uk/news/tr-staff-remuneration-and-incentives
17 http://www.fca.org.uk/news/credit-card-market-study
18 http://www.fca.org.uk/your-fca/documents/application-periods-direction-to-firms

Annex 1: List of non-confidential respondents

Advice NI

Ageas UK

Allianz Insurance plc

Amigo Loans (Nova)

Association of Mortgage Intermediaries

Association of Professional Debt Solution Intermediaries

Balmoral Financial Ltd

Bond Dickinson LLP

British Bankers Association

British Retail Consortium

British Vehicle Rental and Leasing Association

Callcredit Information Group

CashEuroNetUK LLC

Chartered Institute of Credit Management

Christians Against Poverty

Citizens Advice

Citizens Advice Scotland

Coast & Country Housing

Community Development Finance Association

Consumer Finance Association

Council of Mortgage Lenders

Creative Leasing limited

Credit Services Association

Crystal Business Finance ltd

DCSI Ltd

Debt Advice Foundation

Ecofleet UK Ltd

Equifax Ltd

Experian

FH Debt Solutions Ltd

Farr Finance Ltd

Fidelity Works Ltd

Finance & Leasing Association

Financial Services Consumer Panel

First Independent Finance Ltd

ISBA (The Incorporated Society of British Advertisers Ltd)

Insolvency Practitioners Association

Lean on a Friend Limited

Legal & General Group Plc

Lloyds Banking Group Plc

MI Money Ltd

Mann Island Finance Limited

Mendip Community Credit Union Ltd

Mia Bristow

Money Advice Service

Money Advice Trust

MoneyPlus Group

Moneyline

NAFCB (National Association of Commercial Finance Brokers)

National Consumer Federation

National Pawnbrokers Association

Nick Lord

Nottingham Building Society

P Edmonds

The Royal Bank of Scotland Plc

RadioCentre Ltd

Sky Insurance Services Group Ltd

StepChange Debt Charity

Stephen Bassett

The Advertising Association

The General Consumer Council for Northern Ireland

The Institute of Money Advisers

The UK Cards Association Limited

Totemic Limited t/a PayPlan

Toynbee Hall

Wescot Credit Services Ltd

Annex 2: Further feedback (and our responses) on individual questions

Q1-Q4: Credit broking

Issue raised	Our response
Recent legislative change in relation to the type of permission that brokers need was introduced too late by which time many firms had invested considerable time and money.	Changes to legislation (for example in relation to the treatment of domestic premises suppliers and the instalment credit exemption) are a matter for HM Treasury, not the FCA. We have adjusted our processes in light of the changes.
The legislative change does not go far enough as there is still a requirement for leasing brokers to have full permission if they carry out ancillary debt adjusting or debt counselling.	As above, changes to legislation are a matter for HM Treasury and not the FCA.
A non–paid referral should not be considered credit broking activity. 'By way of business' was intended to cover only brokers seeking payment for work.	Some credit broking activities – such as presenting or offering credit agreements or assisting the borrower by undertaking other preparatory work – are excluded where the broker receives no fee or commission. But other activities – notably, effecting an introduction to a lender or broker – will require permission if they are undertaken by way of business. Receipt of a fee or commission is not a necessary element of the 'by way of business' test.
What constitutes 'land' as most of the PS14/18 rules provide an exemption for credit broking secured on land?	'Land' is defined in the FCA Handbook Glossary.
The guidance given on 'durable medium' (for example, including email) does not meet European and UK legislation (the Distance Marketing Directive and the Distance Selling Directive) or the FCA's Glossary definition.	We believe that it does.

Q5: Guarantor loans

Issue raised	Our response
The proposals should not apply to guarantors which are body corporates, or state-backed guarantees.	We accept that the provisions should be limited to guarantors who are 'individuals' (rather than all 'persons') so that the protections for borrowers and guarantors are aligned. We have amended the instrument accordingly.
The proposals should not apply to guarantors who are employers.	As above, if (as in most cases) the employer is a company, the provisions will not apply. However, if the employer is a sole trader or small partnership (i.e. an 'individual'), and so would be protected as a borrower, we believe that it should also be protected as a guarantor.
The proposals should not apply to guarantors for lending to limited companies (non-CCA regulated).	As amended, the provisions apply only in relation to regulated credit agreements (with 'individuals'), and P2P agreements (as defined) where the borrower is an 'individual'.
The proposals should be limited to 'security' as defined in the CCA.	The provisions apply where the individual is to provide a guarantee or indemnity (or both). There are terms used in the CCA definition of 'security'. We specify that a guarantee does not include a legal or equitable mortgage or pledge.
The provisions should be limited to sub-prime guarantor lending or loans designed and marketed specifically to be supported by a guarantee.	We do not agree. Although issues to date have tended to arise mainly in the sub-prime area, that is not a reason to restrict the application of the provisions, which are solely about treating the guarantor as a 'customer' for the purpose of key CONC rules and the Principles (and thereby closing an unintended gap in the regulatory regime). Treating guarantors fairly and with transparency should apply across the board.
The proposals imply a duty to advise, and hence a duty of care. This raises risks that guarantors will try to assert misrepresentation to avoid liability. To avoid this, lenders may insist that all guarantors obtain independent legal advice (raising additional costs) or limit the availability of products (reducing customer choice).	We do not agree that provision of a pre-contract explanation, in the terms proposed, would amount to 'advice'. It is a requirement imposed by the CCD in relation to borrowers, and we see no reason why it should not apply also to guarantors. It can be delivered in a way that does not constitute advice. The purpose is to provide information to enable the individual to assess risks and potential consequences, so they can make an informed decision on whether to act as guarantor in the particular case.
The proposals are inconsistent with developed principles under caselaw on independent legal advice.	We do not agree. The caselaw in question relates to relationships involving undue influence. Our proposals go wider but this does not amount to inconsistency.

Issue raised	Our response
The proposals are inconsistent with the Lending Code provisions.	We do not agree. The Lending Code encourages guarantors to obtain independent legal advice, but the subscriber must also provide information to the guarantor (including the extent of their liability) and must explain relevant features upon request (even if the person has obtained independent legal advice).
It should be sufficient to encourage the guarantor to obtain independent legal advice.	We do not agree, as this does not ensure that the guarantor obtains independent legal advice, or that this constitutes an adequate explanation of the matters covered by CONC 4.2.22R.
It is unnecessary duplication to require the lender to provide an explanation if one has been provided by a solicitor.	We agree on reflection (and our proposals envisaged that an explanation could be provided by a credit broker on the lender's behalf). We have amended the instrument to allow for the explanation to be provided by a solicitor or barrister, as part of independent legal advice. However, the lender must be reasonably satisfied that an explanation was provided, and is compliant with CONC 4.2.22R, and that the person had copies of relevant documents to enable an adequate explanation to be provided.
It is impracticable for a lender to provide an explanation to a guarantor as there is no direct relationship.	We do not agree. The lender is required under the CCA to obtain a signed security instrument and provide a copy to the guarantor, and the Lending Code requires subscribers to provide information (and explanations upon request). We do not prescribe how the explanation is provided – it could be oral or written. As above, we have made an amendment to allow for the explanation to be provided by a credit broker, or a solicitor or barrister (or other relevant person), subject to appropriate safeguards.
The FCA should mandate a standard format for adequate explanations.	We do not agree, and this is not something we mandate in relation to the explanation to the borrower. As above, it is open to firms to provide the explanation in writing or orally, provided that it is adequate to enable the guarantor to make an informed decision.
The FCA should require additional content for the explanation, including the extent of potential liability, how quickly the guarantor will be approached if the borrower does not pay, and how payment will be taken.	We may consider as part of our future work elaborating on the minimum content of the pre-contract explanation.
Firms should be required to provide pre-contract information to the guarantor, including in respect of the process relating to the guarantee and what constitutes a 'signature'.	We may consider this as part of our future work.
Firms should be required to evaluate whether the guarantor has been subject to coercion or undue influence, and advise the guarantor to seek independent legal or debt advice.	We may consider this as part of our future work. As above, we are permitting the adequate explanation to be provided as part of independent legal advice.

Issue raised	Our response
Firms should not have to make the same creditworthiness checks on a guarantor as the borrower, or use the same types of information. They should be free to determine what is necessary and proportionate in the particular circumstances.	We do not prescribe generally how firms should assess creditworthiness or what information they should use (but we are reviewing our creditworthiness rules more generally). We have amended the instrument to make clear that the assessment need not be identical for the guarantor and the borrower, but should be sufficient in depth and scope having regard to the potential obligations on the guarantor.
The firm should be required to assess the guarantor's ability to make repayments as they fall due or within a reasonable period (CONC 5.2.1R).	We have applied to guarantors the rule in CONC 5.2.1R(2)(a), relating to the potential for the commitments to adversely impact the guarantor's financial situation, but do not consider it necessary also to apply (2)(b), given the contingent nature of the liability.
Business guarantors should not require creditworthiness assessment.	As explained above, we have excluded corporate guarantors from the scope of the provisions. If a sole trader or small partnership is acting as guarantor, its creditworthiness should be assessed, just as it would be if it were the borrower under a regulated agreement.
In assessing creditworthiness, firms should be required to take account of whether the individual is already a guarantor under other loans.	We may consider this as part of our future work.
The guarantor should not be liable for the borrower's arrears, or other costs over and above the original capital.	We may consider as part of our future work, measures to ensure that the extent of potential liability is clear, and whether to limit this.
Details of a CPA should be provided in writing but should not be required to be documented in the guarantee.	We do not agree. Where a CPA is provided upfront by a borrower, it has to be documented as part of the credit agreement, and the same should apply to a guarantor. This helps ensure that the information is reasonably prominent and is likely to be retained.
Firms should not be permitted to take money from a guarantor using a CPA.	Borrowers are able to set up a CPA, subject to appropriate transparency and informed consent, and we see no reason why the same should not apply to a guarantor.
Firms should not be permitted to take money from a guarantor without prior warning or issue of a default notice.	We may consider as part of our future work whether to require pre-notification to the guarantor before taking payment. We do not consider that taking or demanding payment from a guarantor would amount to 'enforcement' of the security (see CONC 13.1.6G) and so it would not require a CCA default notice.
Firms should be required to pursue the borrower for payment, over a minimum period, before approaching the guarantor for payment, and should be precluded from doing so until the borrower has missed a certain number of payments.	We may consider this as part of our future work.

Issue raised	Our response
Guarantors should receive post-contract information including annual statements and arrears notices, and should be notified if the borrower has failed to make a payment.	We may consider this as part of our future work.

Q6: Joint borrowers

Issue raised	Our response
The proposals should not apply to partnerships or unincorporated bodies, as this could constrain business lending unnecessarily.	In general, the 'customer' will be the partnership or unincorporated body, rather than the individual partners or members, and we have amended the guidance to reflect this. There may however be circumstances in which a firm may be in breach of Principle 6 (treating customers fairly) if it does not have regard to the position of the individual partners. Even though legal action would be taken against the partnership, a judgment or order could be enforced against any of the property of the partnership and any partner who is not a limited partner.
It is unclear whether this requires separate explanations, or assessment of whether these should be given.	This is guidance, not a rule, and states merely that firms should consider whether it may be appropriate to give separate explanations to each customer.
Separate explanations should always be given to each borrower.	CONC 4.2.5R(1) requires each customer to be provided with an adequate explanation. The question is whether this is a single explanation to all customers jointly, or separate explanations to each customer. As above, the firm should consider what is appropriate in the situation. We have amended the guidance to clarify this.
Firms should be permitted to provide the explanation to only one borrower.	CCA regulations require pre-contract information to be disclosed to each borrower (subject to a limited carve-out for certain overdrafts) and CONC similarly requires an explanation to be provided to each customer. This can be a single explanation to all of them jointly, but each customer must be provided with an explanation.
Flexibility should be allowed in the case of overdrafts.	The requirement to provide an adequate explanation does not generally apply in the case of overdrafts, given CONC 4.2.1R(5).
Firms will always give the same explanation to each borrower.	We have amended the guidance to clarify that, in deciding what is appropriate, the firm should consider whether (if separate explanations are provided) these should be the same or different for each customer. In deciding this, the firm should consider the factors in CONC 4.2.7G separately for each customer.
It is unclear whether the firm must determine the level of understanding of each borrower.	The factors in CONC 4.2.7G include the customer's level of understanding, but only to the extent evident and discernible. Firms should not ignore evidence suggesting that a customer does not understand the explanation provided or the commitment they are taking on.

Issue raised	Our response
It is unclear whether lenders are precluded from offering credit unless all borrowers are physically present.	It is open to firms to give an explanation separately to each customer, and this can be oral or written. The fact that an oral explanation is given to one customer does not mean that it must be given orally to each other customer.
It is impracticable to provide explanations to both customers.	We do not agree. As noted above, firms are already required to provide pre-contract information and explanations to all customers. The guidance merely covers whether this is joint or separate, and if separate, whether it is the same or different for each customer.
Firms should not be required to confirm that each borrower can demonstrate ability to service the borrowing from current income. This could lead to joint loans not being offered, increasing financial exclusion.	As explained above, this is guidance not a rule, and states merely that the firm should consider whether it may be appropriate to assess each customer separately as well as collectively. We have amended the guidance to refer to the risk to each customer were they to become solely responsible for the obligations.
Lenders cannot forecast what may happen to a relationship and whether a borrower may become wholly liable for payments under a joint loan.	We do not expect the firm to be satisfied in all cases that each joint borrower can afford the loan individually on current income. However, the firm should not ignore evidence suggesting that the loan would not be sustainable, and should exercise appropriate forbearance in the event that it becomes unaffordable.
Firms should have flexibility so that proportionate and appropriate approaches can be adopted in light of the circumstances.	As we say above, we do not prescribe how firms should assess creditworthiness or what information they should use. Proportionality is a key element of our current rules in CONC 5.
The FCA should issue guidance on when it may be appropriate or necessary to undertake separate assessments.	We may consider this as part of our future work.

Q7: Credit reference ag encies

Issue raised	Our response
The provisions should be retained, as incorrect CRA data can also impact on ongoing account management and in areas outside consumer credit (such as job applications or housing).	We appreciate the arguments, but do not consider that the potential benefits of the rule outweigh the costs, including for recipients of the information. It is open to the consumer to notify such persons directly where the new information could impact materially on a previous or ongoing decision. There is no requirement generally under data protection legislation to notify previous recipients of incorrect data (unless ordered by a court).
Consumers should not have to re-apply for credit to have the correction acknowledged.	It is open to the consumer to bring the amended information to the attention of persons whose decisions might be materially affected. In the case of credit, a new application involving a fresh CRA check will take account of the revised information in the usual way.

Q8: Other lending proposals

Issue raised	Our response
'Sophistication' is nebulous, and it is unclear how it should be assessed or factored in. It should be qualified as with the existing reference to level of understanding.	We have amended the guidance, to remove the reference to sophistication, and have inserted in its place a more concrete reference to the customer's level of understanding of the pre-contract information and the agreement, alongside the existing reference to the customer's level of understanding of the explanation (and so have made this subject to the qualification 'to the extent evident and discernible').
It is not practicable to make an assessment of relative sophistication at the customer level, especially for online or other distance sales.	As we say above, we have amended the guidance. We do not expect firms to proactively assess whether the customer understands the pre-contract explanation, but they should not ignore evidence suggesting the customer does not understand the commitment they are taking on.
It is unduly prescriptive to mandate factors that must be taken into account in deciding the level and extent of an explanation.	The list of factors in CONC 4.2.7G is guidance, not a rule, and is qualified to make clear that firms are only expected to have regard to these factors 'to the extent appropriate to do so'.
It is unclear whether the lender should establish the borrower's intended purpose, and how this should impact on the explanation.	The purpose of the credit may be a relevant factor in deciding on the level and extent of the explanation, but we qualify this as being where the firm knows what the purpose is. We do not expect firms to proactively establish this, unless it is central to the assessment.

Issue raised	Our response
The FCA should clarify that explanations are 'advice' and so should be suitable and take account of the customer's circumstances.	We do not agree that an explanation is 'advice' – it is about the provision of information to enable the customer to make an informed decision. The firm should take account of relevant factors.
Default charges should not be included as a factor in assessing creditworthiness (and this contradicts CONC 5.3.1G). The test should be based on the customer's ability to make the contractual repayments, assuming no default (and lenders cannot predict the frequency or cost of likely defaults).	We were not proposing to amend CONC 5.2.1R which deals with the factors to be considered as part of the creditworthiness assessment. The proposal was in relation to CONC 5.2.4G which gives guidance on the extent and scope of the assessment and states that the firm should consider what is appropriate having regard to (for example) the potential risks to the customer. As noted in PS14/3, the risk of credit being unsustainable is likely to be greater, the higher the actual and potential costs of the credit relative to the borrower's financial circumstances; the risks will be correspondingly lower if the credit is free of interest and charges or there are no charges payable on default or these are insignificant.
The reference to default charges is confusing, and the policy position set out in CP15/6 does not appear to accord with the drafting proposal which refers to 'the cost of the credit'.	We accept that the proposed amendment has given rise to some confusion. On reflection, we have decided not to make the change, and instead will address the issue as part of our wider creditworthiness work.
Agree in principle that the business plan is unlikely to be the sole consideration, but for a start-up there may not be any prior trading history.	We make clear that the assessment must not be based solely on the business plan, and this is irrespective of whether it is an existing business or a start-up. There may be adverse impacts on the individuals as consumers if the business fails (unlike with a limited company).
Affordability checks should include an assessment of whether the consumer is in a debt solution, whether formal or informal.	We may consider this as part of our future work.
CONC 5.2.4G(3B) should not refer to a credit broker, as the obligation to assess creditworthiness is solely on the lender.	We have removed the reference.
It is impossible with telephone-based processes to provide the terms of a CPA before it is granted.	CONC 4.6.3R already requires the terms of a CPA to be included in the credit agreement, and we have just clarified the drafting.
CONC 13.1.6G should not apply to regular statements (monthly bills). It should be limited to a demand to pay arrears or the full balance.	We have amended the guidance to make clear that a 'communication' for these purposes does not include a statement under the CCA which does not itself constitute or contain a request for payment.
Lenders should always inform the customer if a debt is legally unenforceable.	We may consider this as part of our future work.
Guidance on the total charge for credit should make clear that it refers to discounts or payments which are separate from the credit agreement or are received post-agreement.	We believe that the wording is clear on this.
The proposed PERG change on employee loans does not appear to accurately reflect the statutory provision or the policy intention.	We have amended the guidance. The loan may be an incident of employment with the lender or with an undertaking in the same group.

Q9: HCSTC risk warning

Issue raised	Our response
It is impracticable to include the risk warning in SMS text messages, so this is ruled out for advertising.	We do not agree. Although the technical length of one SMS message is 160 characters, firms can use 'SMS concatenation' to combine several SMS together. If three SMS are combined, this allows up to 459 characters per message (and some devices and network services allow more than three SMS to be concatenated).
It is impracticable to include the risk warning in Twitter or Facebook, which are very cost-effective media for unestablished brands to advertise and attract custom.	We do not agree. As noted in our Social Media and Customer Communications guidance (GC14/1), it is possible to insert images, including the use of infographics, into tweets and similar communications. Alternatively, the tweet can include a link to a website, with the tweet being constructed in such a way that it is not itself a financial promotion or is exempt.
Removal of the exemption is dogmatic and uncommercial, and supports incumbents at the expense of new entrants and start-ups.	We do not agree. As above, the circumstances where it might be impracticable to include the risk warning are extremely limited, and it is open to firms to advertise in a way that does not require its inclusion, for example by taking advantage of the image advertising exclusion in CONC 3.1.7R. As noted in the CBA, we consider that there is sufficient flexibility in our rules to mean that any increase in costs for firms or barriers to entry are unlikely to be significant.
The FCA should tighten the rule so that it cannot be abused, and take enforcement action against firms that are not abiding by the spirit, but without a blanket requirement.	We take supervisory or enforcement action where appropriate, but the existence of the exemption can make this problematic by allowing for arguments on 'practicability' which in all cases to date have proved to be unjustified or where the firm could have advertised without requiring inclusion of the risk warning.
The HCSTC risk warning requirement should be extended to all credit products so that consumers understand the risks of borrowing.	We do not agree, as there are particular risks with HCSTC. However, we will keep under review whether to extend the requirement (or indeed whether to remove it if it is no longer necessary for HCSTC given the price cap).

Q10: Clear, fair and not misleading

Issue raised	Our response
'Clear, fair and not misleading' is too subjective to justify making it a rule. As guidance, the FCA can take a balanced view, but as a rule the position is binary. This creates regulatory uncertainty.	We recognise that enforcement of the proposed rule requires the exercise of discretion and supervisory judgement, but this is the case for other rules in this area such as the general requirements in CONC 3.3 or the rules on prominence. We think the detail of the rule will give greater certainty to firms and better protection to consumers, and we have moved the provision into CONC 3.3.1R to make clear that it is subject to the existing 'reasonable steps' defence in CONC 3.3.1R(2).
It is important that the FCA takes a sensible approach to supervision. There is a risk advertisers include unnecessary details to 'play safe'.	We do so already, using a variety of internal processes and precedents. Firms are subject to Principle 7, so are expected to arrive at their own interpretation of 'clear, fair and not misleading' and be able to justify this if challenged. We agree that information overload should be avoided.
Clarification is needed as to what the FCA considers 'important' information and in what circumstances. This is likely to vary significantly.	We agree that what is 'important' may vary according to the product and target market, but as above it is for firms to make a reasonable assessment. The Consumer Protection from Unfair Trading Regulations 2008 similarly refer to omitting 'material' information.
Comparisons or contrasts in CONC 3.3.5AR should be limited to credit-related products or services.	This is aimed primarily at comparisons with other financial products or services, but is not limited to these. A promotion may breach 'clear, fair and not misleading' in respect of some other aspect.
The FCA should provide further guidance (e.g. via examples of good/bad practice), to help firms understand regulatory expectations and what they should do to comply.	We may consider this as part of our future work.

Q11: Prominence

Issue raised	Our response
CONC 3.5.5R is unduly prescriptive. It should be sufficient that matters required by regulation are 'prominent'.	The CCD requires the representative example to be 'clear, concise and prominent', and the European Commission's report on CCD implementation makes clear that relative prominence is integral to this. We are making it easier for firms to comply with the rule (for example, by removing the difficulty of complying with the requirement for information to be of *greater* prominence in certain media such as radio by allowing information to be 'no less prominent'). This should reduce costs to firms, without any material reduction in consumer protection.
Do not agree that the representative example should be more prominent than any indication or incentive requiring inclusion of the representative APR, and this is not in line with the intention of the CCD.	The CCD permits Member States to introduce national rules requiring a representative APR in cases where a representative example is not otherwise required. Our amended rules require the representative APR to be no less prominent (rather than more prominent) than any of the content which requires inclusion of the representative APR, so a representative example (containing the representative APR) must similarly be no less prominent.
The FCA should clarify whether it expects the 'average customer' to vary between products or promotions. Examples would help firms.	We agree that the 'average customer' may vary by product or sector, but it is for firms to take a reasonable view and be prepared to justify this if challenged.
Prominence should require firms to take account of the relative sophistication of the target customer segment.	We require firms as part of 'clear, fair and not misleading' to ensure that the promotion is sufficient for, and presented in a way likely to be understood by, the average member of the group to which it is directed or by which it is likely to be received.

Q12: Representative APR

Issue raised	Our response
The proposal implies that all financial promotions should be regarded as including an 'incentive' as they are intended to attract new customers.	A representative APR is not required merely because something is a financial promotion. The question is whether it contains certain types of statement which are clearly intended to influence the customer in a certain way, or are likely to have that effect, rather than being merely factual statements presented in a neutral manner.
All promotions should include a representative APR or example.	We do not agree. It should be open to firms to advertise in a generic way, provided that they do not include information requiring inclusion of the representative APR or a representative example. This may be particularly important in space-limited media.
Need to clarify whether 'product' is confined to financial aspects (in line with the CCD). The reference to 'any other aspect' potentially expands the scope of the requirement.	We have amended CONC 3.5.7R and 3.5.8G to clarify that a 'comparison' for these purposes means a comparison relating to the credit.
There is a contradiction with CONC 3.1.7R which exempts a name or trading name from CONC 3.	CONC 3.1.7R sets out the 'image advertising' exclusion, and a promotion is exempt from aspects of CONC 3 if it contains only the information specified. However, it is not exempt from the requirements relating to the representative example and representative APR.
Consumers may not receive the advertised representative APR but may pay a much higher rate, especially via brokers.	We have clarified the basis for calculation of the representative APR and that at least 51% of consumers entering into agreements as a result of the promotion must be expected to receive that rate or better.
The FCA should publish further guidance (including examples of statements requiring inclusion of a representative APR) to assist with understanding of regulatory expectations.	We may consider this in future.
Firms should be allowed to abbreviate 'representative' (e.g. 'Rep APR') in space-limited promotions.	We do not agree. A media-neutral approach is preferable, and it is questionable whether all consumers would understand what 'Rep' means.
There should be an exemption for community development finance institutions (CDFIs) from the representative APR requirement. Inclusive and affordable products and services are a core part of what CDFIs offer and so an APR will generally be required (but does not properly reflect the true cost of credit).	We are minded to include this in a future consultation, given that community finance organisations (CFOs) are exempt from the HCSTC rules on the basis that they are constituted to serve a social purpose (like credit unions) and it is the nature of their customer base which is likely to require a representative APR. The exemption would be solely in relation to the representative APR (and not the CCD requirement for a representative example).

Q13: Other financial promotion proposals

Issue raised	Our response
'Interest free' is not a statement of a rate of interest. It merely indicates the absence of interest, and that the product cost is the same whichever mechanism is used to pay.	We do not agree. The CCD refers to advertising which 'indicates' an interest rate, and in our view this would include an indication in words rather than merely figures. An interest rate that is 0% is still an interest rate. However, we accept that such promotions are outside the scope of the CCD as Article 2.2(f) exempts agreements where the credit is granted free of interest and without any other charges.
If credit is genuinely interest-free (and the credit price is identical to the cash price), a representative example has no value to consumers, and amounts to information overload. It may confuse consumers and detract attention from more important information, and makes compliance difficult in space-limited media.	We are minded to consider a proposal to exempt promotions from the requirement for a representative example or representative APR if the credit is free of all interest and charges (in accordance with CONC 3.5.12R). In the meantime we have not made the change proposed in CP15/6.
It is unclear whether 'no fees' or 'fee free' is an indication of cost, requiring a representative example.	As above, we are minded to exclude promotions where credit is free of all interest and charges. If it is not, such a statement may require a representative APR but would not require a representative example.
The proposal appears to imply a ban on 'pre-approved' promotions.	A reference to 'pre-approved' credit will breach CONC 3.3.3R only if the financial promotion or communication states or implies that credit is available regardless of the customer's financial circumstances or status. The guidance at CONC 3.3.4R uses the word 'may' deliberately – this will depend upon the particular facts.
It is possible to carry out affordability checks in advance of mailings, and therefore have promotions which are completely free of conditions relating to additional criteria.	We have expanded the guidance at CONC 3.3.4G to remind firms that they must assess the customer's creditworthiness in accordance with CONC 5. The firm must make a reasonable assessment, and – in accordance with CONC 5.3.3G – should take reasonable steps, insofar as it is reasonable and practicable to do so, to ensure that relevant information is complete and correct. This may, for example, mean that a further assessment may be needed if there is a material change in the customer's circumstances between the promotion or communication and a subsequent application for credit.
CONC 3.3.4G should be amended to accord with 5.3.4R which provides a 'carve-out' for certain pawnbroking agreements from having to undertake a full creditworthiness assessment.	We have amended CONC 3.3.3R to disapply the rule in cases where the customer's total financial liability under a pawnbroking agreement is limited under the agreement to the proceeds of sale which would represent the true market value (within the meaning of s121 CCA) of the article(s) pawned by the customer.

Issue raised	Our response
CONC 3.5.6G(1A) is inconsistent with (1) and the Glossary definition, as it refers to agreements the lender expects to enter into.	We have amended the guidance to clarify that the representative APR is by reference to agreements which are expected to be entered into (whether with the firm or a third party) as a result of the promotion. The 51% test must take account of the APR of each of those agreements.
CONC 3.5.6G(1B) does not appear to add anything of substance, and misses a more significant aspect of the BIS guidance, that assessing what is representative is effectively a two-stage process.	We have amended CONC 3.5.6G(1A) to clarify that the representative example must be representative of agreements to which the representative APR applies. (1B) elaborates on this, in line with the BIS guidance on the regulations implementing the CCD, as referenced elsewhere in CONC 3.5.6G.
CONC 3.5.6G implies that information in the representative example is up to the advertiser's choice, but this is not the case given the CCD.	The CCD does not preclude national rules setting out how to determine a representative example (but it must contain all the information specified).
CONC 3.5.4G(2) has a disproportionate impact on firms with different interest rates. It would require significant changes, and at least six months should be allowed.	We are merely clarifying the application of existing guidance (which was previously in the BIS guidance). We do not see why it should take six months to amend systems, but it is open to a firm to apply to the FCA for a waiver or modification of a rule on the grounds that compliance would be unduly burdensome, or would not achieve the purpose, and the waiver or modification would not adversely affect the advancement of our operational objectives.
CONC 3.3.2R creates potential problems for brokers with a panel of lenders as they would have to refer to all of them. This raises practical difficulties, and lenders might want to approve the promotion, making the process cumbersome.	The requirement to specify the name of the lender applies only where this is known. If a broker has a panel of lenders, and it is not known at the point of advertising which one will be used, the requirement does not apply.
There should be flexibility to use trading names and not necessarily the full legal name. A trading name is often likely to be more recognisable and meaningful to customers.	We do not specify in CONC 3.3.2R that the name must be the firm's legal name (unlike in CONC 3.7.5R) but it should be one which is sufficient to enable the firm to be identified.
Firms should be able to trade under a variety of names where appropriate.	The additional guidance at CONC 2.2.4G does not preclude multiple trading names, but the firm should take particular care to ensure that customers are not misled as to the identity of the firm or the nature or scale of its business.
The FCA should prohibit unsolicited real-time promotions of high-risk credit products such as payday loans and fee-charging debt solutions.	We will be doing further work on unsolicited marketing.

Q14: Guidance on referrals to debt advice

Issue raised	Our response
The guidance may prevent 'hot-keying' to commercial debt advice providers.	The guidance does not prevent this.
How does the FCA define a not-for-profit debt advice body?	We use the FCA Handbook Glossary definition.
The guidance should require that creditors refer customers to the Money Advice Service.	As guidance it cannot require this, but we have included a reference to the Money Advice Service as an example of a way in which a firm may refer customers to a source of not-for-profit debt advice. We would not wish to preclude others.
The FCA should provide guidance on when it is appropriate for a lender to refer a customer to a source of debt advice.	We consider that the range of circumstances under which it would be appropriate to make such a referral are diverse and fact-dependent. We expect firms to be able to exercise good judgement and understand when a referral would be in a customer's interests.
The line in the guidance on consistency with firms' obligations should have further guidance to enable firms to understand when a referral to another source of debt counselling would be inconsistent.	We expect firms to have a thorough understanding of their regulatory obligations and to be able to appreciate when a reference to a particular source or sources of debt advice would not be in keeping with those obligations.

Q15: Use of CPA where it is not specified in the original credit agreement

Issue raised	Our response
The new mechanism should only apply to credit granted after 1 April 2014.	The CONC rules that require the terms of use of CPA to be included in the credit agreement apply in the same way as the OFT guidance did before April 2014 so we see no reason to limit the mechanism to credit granted after 1 April 2014.
Is the definition of 'forbearance' the same as in CONC 6.7.17R? Firms may not understand what it means.	The definition of 'exercising forbearance' in CONC 6.7 applies only in the context of refinancing. The definition of forbearance as it applies in CONC 7 is wider and includes unilateral indulgence, for example.
Will there be legislative clarification as a result of this proposal?	We are not proposing that a change in the credit agreement to include a CPA would not be a modifying agreement, but that it would be open to firms to introduce a CPA for repayment in certain circumstances without having to amend the original credit agreement. There is no need for the Government to amend legislation for this to have effect.

Issue raised	Our response
The proposal does not require an explanation of cancellation rights and it should be amended to do so.	This appears to be a misunderstanding. The proposal requires the same information about a CPA that would be provided at the outset of an agreement, which includes cancellation rights.
The FCA should consider allowing continued use of a CPA where the customer has brought their account up to date and is no longer in arrears.	Our proposal allows for this.
There should be a requirement for customers to confirm their agreement in a durable medium.	This would be disproportionate for a change in payment method, and we are already requiring that the information be provided in a durable medium and customers be given a reasonable period to consider the information.

Q16: Duration of debt management plans

Issue raised	Our response
The guidance may make it harder to defend consumers from lenders' enforcement actions if clients choose a long-term debt management plan.	We are not sure why this should be the case. A customer should only be on a long-term debt management plan if it is in their interests and, in these circumstances, it seems likely that a creditor would be more likely to accept the proposed repayment plan.
We seek clarification of to whom the guidance applies.	The guidance applies to firms carrying out debt counselling.
There is value in ostensibly long-debt management plans as they allow people in temporary difficulty to recover, and they encourage people who can repay in full to do so.	We agree, and said this in the consultation paper.
The majority of clients do not experience significant improvement in their financial situation.	This is why it is important that firms take into account the likely term of a debt solution. If there is no realistic prospect of improvement or a better alternative then it is unlikely to be in the customer's best interests.
Does the proposed guidance apply to advice to set up a self-service repayment plan?	The guidance would apply where, as part of debt counselling, there is a recommendation to enter into a debt solution. That is likely to include a recommendation to enter into a 'self-help' repayment plan.

Q17: Amendment of DISP in relation to not-for-profit debt advice bodies

Issue raised	Our response
Proposal that DISP should state clearly that information about complaints procedures can be made orally in face-to-face settings.	The rule we consulted on does not refer to any particular advice settings (e.g. telephone or face to face) – it merely states that at the first point of contact, an oral reference to the availability of the information is acceptable if the firm does not communicate in writing at that point. Where this is the case, the requirement can be met verbally.

Q18: Other minor debt-related proposals

Issue raised	Our response
Concern that a firm providing advice but transferring to another firm for the solution would not have to provide the advice in a durable medium and this could offer a way round the rules.	Assuming the firm was providing debt advice in accordance with our rules, there is likely to be little to gain by structuring the business in such a way so as to avoid the requirement to confirm that advice in a durable medium. In any case, as the proposed guidance accompanying the rule states, it may be appropriate to provide advice in a durable medium even when the firm has concluded on reasonable grounds that a contract will not be entered into.
The solicitors' exemption means solicitors can in some circumstances carry out certain debt-related regulated activities without authorisation, whereas insolvency practitioners cannot.	This is a legislative issue, which is a matter for HM Treasury.
The single financial statement should be reflected in CONC.	CONC includes guidance that firms should use a method of producing a financial statement such as the common financial statement. We will consider updating this reference once the single financial statement is fully introduced.
Money Advice Service advice quality standards should be reflected in the FCA regime.	We do not believe this is necessary at this time, as the scrutiny we apply to firms at authorisation exceeds the scrutiny required for a firm to meet the debt advice quality standards.

Appendix 1:
Made rules and guidance (legal instrument)

FCA 2015/49
FOS 2015/9

CONSUMER CREDIT (AMENDMENT NO 2) INSTRUMENT 2015

Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited fixes and varies the standard terms for Voluntary Jurisdiction participants as set out in Annex D to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 227 (Voluntary jurisdiction);
(2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
(3) paragraph 22 (Consultation) of Schedule 17.

B. The fixing and variation of the standard terms in Annex D by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Act:

(1) section 137A (The FCA's general rules);
(2) section 137R (Financial promotion rules);
(3) section 137T (General supplementary powers);
(4) section 139A (The FCA's power to give guidance);
(5) section 226 (Compulsory jurisdiction); and
(6) paragraph 13 (FCA's rules) of Schedule 17.

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

E. The Financial Conduct Authority consents to and approves the standard terms fixed and varied by the Financial Ombudsman Service Limited.

Commencement

F. (1) Subject to (2), this instrument comes into force on 2 November 2015.
(2) Annex B (COND), Annex D (DISP), Part 1 of Annex E (CONC) and Annex F (PERG) to this instrument come into force on 28 September 2015.

Amendments to the Handbook

G. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Principles for Businesses (PRIN)	Annex A

Threshold Conditions (COND)	Annex B
Supervision manual (SUP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D
Consumer Credit sourcebook (CONC)	Annex E

Amendments to material outside the Handbook

H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument.

Notes

I In Annex E, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Citation

J. This instrument may be cited as the Consumer Credit (Amendment No 2) Instrument 2015.

By order of the Board of the Financial Ombudsman Service Limited
23 September 2015

By order of the Board of the Financial Conduct Authority
24 September 2015

Annex A

Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text.

3 Rules about application

…

3.4 General

…

Guarantors etc

3.4.3A R (1) Paragraph (2) applies in relation to an *individual* who:

(a) has provided, or is to provide, a guarantee or an indemnity (or both) in relation to a *regulated credit agreement*, a *regulated consumer hire agreement* or a *P2P agreement*; and

(b) is not the *borrower* or the *hirer*.

(2) If the *individual* is not a *customer*, they are to be treated as if they were a *customer* for the purposes of *Principles* 6 and 7.

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

Annex B

Amendments to the Threshold Conditions (COND)

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

Comes into force on 28 September 2015

1.1A Application

…

To what extent does COND apply to credit firms with limited permission?

1.1A.5A G …

(3) Paragraph 2G of Schedule 6 to the *Act* defines relevant credit activity for the purposes of the *FCA Threshold Conditions*. The interpretation of some of the key expressions used in this specific context is as follows:

…

(d) "domestic premises supplier" means a supplier who sells goods, offers or agrees to sell goods, or offers or contracts to supply services, ~~or supplies services~~ to customers who are individuals while the supplier or the supplier's representative is physically present in the dwelling of the customer ~~or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer~~ (though a supplier who does so only on an occasional basis is not to be treated as a "domestic premises supplier" unless the supplier indicates to the public at large, or a section of it, the supplier's willingness to attend, in person or through a representative, the dwelling of a potential customer in order to do any of those things).

(3A) Questions may arise over whether a supplier who visits a customer's dwelling to take measurements or give an estimate is a "domestic premises supplier". For example:

(a) if the supplier, or the supplier's representative, gives a quote or estimate to the customer during the visit that is sufficiently specific as to be capable of being accepted in a way that is binding on the supplier, then the quote or estimate is an offer; on that basis, the supplier falls within the definition of "domestic premises supplier", irrespective of whether the customer accepts the offer during the visit;

(b) where the supplier, or the supplier's representative, gives only a rough estimate or quote during the visit, with a view to submitting a refined estimate or a firm quote at a later time when the supplier is not at the customer's dwelling, that rough estimate will not be an offer; on that basis, the supplier will not fall within the definition of "domestic premises supplier", unless the customer and the supplier, or the supplier's representative, do reach an agreement during the visit; and

(c) where an agreement is reached, the supplier will have sold, or agreed to sell, goods or contracted to supply services, and will therefore be a "domestic premises supplier"; this may be the case even if the agreement is subject to later specification of the price, the goods or the services.

It is immaterial whether the supplier carries on any *credit broking* (or other *regulated activity*) during the visit.

(4) In summary, the following *credit-related regulated activities* are relevant credit activities for the purposes of the *FCA Threshold Conditions*:

(a) *credit broking* when carried on:

…

(iii) in relation to a *consumer hire agreement* ~~where the goods being hired is a vehicle~~ or a *hire-purchase agreement*;

…

(b) *consumer credit lending* if carried on by a *local authority* or if:

…

(ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of *credit* (this includes a charge payable in connection with a breach of the agreement or on the occurrence of a specified event; *consumer credit lending* under an agreement that contains such a charge is not a relevant credit activity); and

…

Annex C

Amendments to the Supervision manual (SUP)

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

16.12 Integrated Regulatory Reporting

…

Regulated Activity Group 12

…

16.12.29C R The applicable *data items*, reporting frequencies and submission deadlines referred to in *SUP* 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of *data item*	*Data item* (note 1)	Frequency		Submission deadline
…				
Credit broking websites (note 10)	CCR008	Quarterly~~: 1 January, 1 April, 1 July and 1 October~~ (note 11)	Quarterly~~: 1 January, 1 April, 1 July and 1 October~~ (note 11)	30 *business days*
…				
Note 11	Quarters end on 31 March, 30 June, 30 September and 31 December.			

Annex D

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text.

Comes into force on 28 September 2015

1.2 Consumer awareness rules

…

Publishing and providing summary details, and information about the Financial Ombudsman Service

…

1.2.2 R Where the activity does not involve a sale, the obligation in *DISP* 1.2.1R(2)(b)<u>:</u>

<u>(1)</u> shall apply at, or immediately after, the point when contact is first made with an *eligible complainant*<u>; and</u>

<u>(2)</u> <u>where the *respondent* is a *not-for-profit debt advice body*:</u>

<u>(a)</u> <u>may be met at, or immediately after, the point when contact is first made with an *eligible complainant*, by making an oral reference to the availability of the information if the *respondent* does not communicate with the *eligible complainant* in writing then; and</u>

<u>(b)</u> <u>must be met in writing on the first occasion on which the *respondent* communicates with the *eligible complainant* in writing</u>.

Annex E

Amendments to the Consumer Credit sourcebook (CONC)

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

Part 1: Comes into force on 28 September 2015

7.6 Exercise of continuous payment authority

Recovery and continuous payment authorities etc

...

7.6.2A R (1) This *rule* applies where the terms of a *regulated credit agreement* or a *P2P agreement* do not provide for a *continuous payment authority* and it is proposed that a *customer* will grant a *continuous payment authority* to:

(a) a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*; or

(b) a *debt collector*, provided that the *debt collector* is acting under an arrangement with the *lender* or the *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, the effect of which is that a payment by the *customer* to the *debt collector* amounts to a discharge or reduction of the debt due to the *lender*.

(2) The *firm* which proposes the *continuous payment authority* to the *customer* must, before the *customer* grants the *continuous payment authority*:

(a) explain why a *continuous payment authority* is proposed;

(b) provide the *customer* with an adequate explanation of the matters in *CONC* 4.6.2R(2);

(c) give the *customer* information, on paper or in another *durable medium*, setting out, in plain and intelligible language, the terms of the *continuous payment authority* and how it will operate; and

(d) give the *customer* a reasonable opportunity to consider the explanations required by (a) and (b) and the information required by (c).

(3) A *firm* must not propose that a *customer* should grant a *continuous*

payment authority, and must not exercise rights under such an authority, in respect of *repayments* under a *regulated credit agreement* or a *P2P agreement*, the terms of which do not already provide for a *continuous payment authority*, unless:

(a) the *customer* is in arrears or default in respect of the agreement; and

(b) a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, or a *debt collector* acting under an arrangement with the *lender* or the *person*, is exercising forbearance in respect of the *customer* in relation to the agreement.

7.6.2B G (1) Where a *regulated credit agreement* or a *P2P agreement* does not incorporate the terms of a *continuous payment authority*, *CONC* 7.6.2AR enables a *continuous payment authority* to be put in place (for example, for a repayment plan) without necessarily requiring an amendment to the agreement. But *CONC* 7.6.2AR applies only where the *customer* is in arrears or default, and the creation of the *continuous payment authority* supports the fair treatment of the *customer* and facilitates the exercise of forbearance (see *CONC* 7.3.4R and *CONC* 7.3.5G).

(2) *CONC* 7.6.2AR also permits a *continuous payment authority* to be granted to a *debt collector*, provided that the *debt collector* is acting under an arrangement with a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, such that a payment to the *debt collector* is treated as a payment to the *lender*, and the requirements of *CONC* 7.6.2AR(3) are met.

(3) *CONC* 7.6.2AR is subject to the *rule* in *CONC* 7.6.12R which restricts *firms* to two requests under a *continuous payment authority* for a sum due for *high-cost short-term credit*.

(4) Whether a forbearance that involves the creation of a *continuous payment authority* amounts to an agreement that varies or supplements a *regulated credit agreement* (rather than merely an indulgence to the *customer*) will depend on the circumstances. If there is an agreement that varies or supplements a *regulated credit agreement*, section 82(2) of the *CCA* requires it to be documented as a modifying agreement and *CONC* 4.6.3R applies instead of *CONC* 7.6.2AR. *Firms* should note the possibility that a *P2P agreement* may be a *regulated credit agreement*.

…

8.3 Pre-contract information and advice requirements

…

8.3.4A R (1) If a *firm* has not entered into a contract with a *customer*, and is satisfied on reasonable grounds that it is unlikely to do so, *CONC* 8.3.4R applies in relation to that *customer* as if the words "is provided in a *durable medium* and" were omitted.

(2) The *firm* must keep a record of the grounds in (1).

…

8.3.6A G (1) *Firms* must provide advice in a *durable medium*, unless *CONC* 8.3.4AR applies. Where questions over the application of that exemption may arise, for example, in relation to advice given to a *customer* at an initial meeting or telephone call, the following considerations may be relevant:

(a) if a *firm* never charges for advice and never enters into contracts with *customers* for *debt solutions*, *CONC* 8.3.4AR may remove the requirement to provide advice to the *customer* in a *durable medium*; and

(b) if a *firm* enters into contracts with *customers* (in relation to advice, to a *debt solution*, or to some other matter), it will need to consider, at the early stages of contact with a *customer*, whether a contract with that *customer* may follow. A *firm* is only likely to able to satisfy itself on that point once discussions with a *customer* have advanced to a stage where it is reasonable to conclude that it is more likely than not that the *firm* will not enter into a contract with the *customer*. The *firm* should keep a record of its reasons for being satisfied on the point.

(2) Where the exemption in *CONC* 8.3.4AR applies, the *firm* should consider whether it may nevertheless be appropriate to comply with *CONC* 8.3.4R in certain cases, for example where complex advice is given.

Part 2: Comes into force on 2 November 2015

2.2 General principles for credit-related regulated activities

…

2.2.4 G …

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

…

2.5 Conduct of business: credit broking

…

Unfair business practices: credit brokers

2.5.8 R A *firm* must not:

…

(2) other than where:

(a) ~~the *firm* has obtained the contact details of a *customer* (C) in the course of the sale or negotiations for the sale of a product or service to C;~~ [deleted]

(b) ~~the direct marketing is in respect of the *firm's* similar products and services only;~~ [deleted]

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

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

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

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

(d)

…

…

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

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

[**Note**: paragraph 2.62, 2nd bullet of *JGPPI*]

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

[**Note**: paragraph 2.62, 2nd bullet of *JGPPI*]

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

[**Note**: paragraph 4.26f of *CBG*]

(15) ~~in relation to an insurance product or service or other linked product or service to the *credit agreement* or *consumer hire agreement* (whether the service or product is optional or required as a condition of the *credit agreement* or *consumer hire agreement*) discourage or prevent the *customer* from seeking or obtaining the product or service from another source;~~ [deleted]

~~[**Note**: paragraph 4.26f of *CBG*]~~

…

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

[**Note**: paragraph 4.17c of CBG]

…

…

3 Financial promotions and communications with customers

3.1 Application

…

3.1.4A G *Firms* are reminded that the *rules* and *guidance* in *CONC* 3.9 also apply to *financial promotions* and communications with a *customer* in relation to *debt counselling* and *debt adjusting*.

…

3.1.7 R (1) *CONC* 3 does not apply (apart from the provisions in (2)) to a *financial promotion* or communication that consists of only one or more of the following:

(a) the name or a trading name of the *firm* (or its *appointed representative*);

…

…

3.2 Financial promotion general guidance

…

Meaning of "prominent"

3.2.3 G For the purposes of this chapter, information or a statement included in a *financial promotion* or communication will not be treated as prominent unless it is presented, in relation to the other content of the *financial promotion* or communication, in such a way that it is likely that the attention of the average *customer* to whom the *financial promotion* or communication is directed would be drawn to it.

3.3 The clear, fair and not misleading rule and general requirements

3.3.1 R (1) …

(1A) A *firm* must ensure that each communication and each *financial promotion*:

(a) is clearly identifiable as such;

(b) is accurate;

(c) is balanced and, in particular, does not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;

(d) is sufficient for, and presented in a way that is likely to be

understood by, the average member of the group to which it is directed, or by which it is likely to be received; and

(e) does not disguise, omit, diminish or obscure important information, statements or warnings.

(1B) A *firm* must ensure that, where a communication or *financial promotion* contains a comparison or contrast, the comparison or contrast is presented in a fair and balanced way and is meaningful.

(2) If, for a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with (1), (1A) and (1B), a contravention does not give rise to a right of action under section 138D of the *Act*.

General requirements

3.3.2 R A *firm* must ensure that a communication or *financial promotion*:

…

(4) in the case of a communication or *financial promotion* in relation to *credit broking*, ~~indicates to the *customer*~~ specifies the ~~identity~~ name of the *lender* (where it is known).

[**Note**: paragraph 4.8a of *CBG*]

…

3.3.3 R (1) A *firm* must not in a *financial promotion* or a communication to a *customer* ~~suggest or state, expressly or by implication,~~ state or imply that *credit* is available regardless of the *customer's* financial circumstances or status.

[**Note**: paragraphs 3.7o of *CBG* and 5.2 of *ILG*]

(2) This *rule* does not apply to a *financial promotion* or communication relating to a *credit agreement* under which a *person* takes an article in *pawn* and the *customer's* total financial liability (including capital, interest and all other charges) is limited under the agreement to the proceeds of sale which would represent the true market value (within the meaning of section 121 of the *CCA*) of the article or articles *pawned* by the *customer*.

3.3.4 G …

(2) ~~If *credit* is described as pre-approved, in accordance with *CONC* 3.5.12R the provision of the *credit* should be free of any conditions regarding the *customer's* credit status, and the *lender* or, in relation to a *P2P agreement* the *operator of an electronic system in relation to lending*, should have carried out the required assessment under *CONC* 5.~~ A statement or an implication that *credit* is guaranteed or

pre-approved, or is not subject to any *credit* checks or other assessment of creditworthiness, may contravene *CONC* 3.3.3R. *Firms* are reminded of the requirements of *CONC* 5 (Responsible lending).

Guidance on clear, fair and not misleading

3.3.5 G ~~A firm should ensure that each communication and each *financial promotion*:~~

~~(1) is accurate and, in particular, should not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;~~

~~(2) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;~~

~~(3) does not disguise, diminish or obscure important information, statements or warnings; and~~

~~(4) is clearly identifiable as such.~~ [deleted]

~~[**Note:** in relation to identifying marketing material as such, paragraphs 3.7p of *CBG* and 3.18q of *DMG*]~~

…

3.3.8 G ~~If a communication or a *financial promotion* compares a product or service with one or more other products (whether or not provided by the *firm*), the *firm* should ensure that the comparison is meaningful and presented in a fair and balanced way.~~ A comparison or contrast to which *CONC* 3.3.1R(1B) applies may be a comparison or contrast with another *person*, or with another product or service, whether offered by the *firm* or by another *person*.

…

3.4 Risk warning for high-cost short-term credit

Risk warnings

3.4.1 R …

(2) ~~The risk warning in (1) must be included in a *financial promotion* contained in an *electronic communication* unless by reason of the limited space available on the medium in question it is not reasonably practicable to include the warning.~~ [deleted]

…

…

3.5 Financial promotions about credit agreements not secured on land

…

Content of financial promotions

3.5.3 R (1) Where a *financial promotion* ~~includes~~ indicates a rate of interest or an amount relating to the *cost of credit* whether expressed as a sum of money or a proportion of a specified amount, the *financial promotion* must also:

…

…

Guidance on showing interest rates and cost of credit

3.5.4 G (1) A rate of interest for the purpose of *CONC* 3.5.3R(1) is not limited to an annual rate of interest but would include a *monthly* or daily rate or an *APR*. It would also include a reference to 0% credit. An amount relating to the *cost of credit* would include the amount of any fee or charge, or any *repayment* of *credit* (where it includes interest or other charges).

…

(2) If a *rule* in *CONC* 3.5 applies to a rate of interest or a charge, and the rate or charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown.

[**Note**: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

Representative example

3.5.5 R …

(5) The information required by (1) must be:

(a) specified in a clear, ~~and~~ concise and prominent way;

…

(d) given ~~greater~~ no less prominence than:

…

…

Guidance on the representative example

3.5.6 G …

(1A) *Firms* are referred to the *Glossary* definition of *representative APR* and reminded that they should consider the agreements which they reasonably expect to be entered into (whether by the *firm* or by another *person*) as a result of the *financial promotion*, and ensure that the 51% test in that definition takes account of the *APR* of each of those agreements. The representative example in *CONC* 3.5.5R should be representative of agreements to which the *representative APR* applies.

(1B) The example referred to in (1) is unlikely to be representative if, for example, most *customers* entering into agreements as a result of the *financial promotion* are likely to do so for a lower amount of *credit* than that indicated in the example, or with higher rates of interest or other charges than those indicated in the example.

…

(3) ~~If a rate of interest or a charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown.~~ [deleted]

~~[**Note:** paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]~~

…

(6) For showing the *cash price*, the total *cash price* of all items should be shown, together with the price of each item individually. For the purposes of the *Glossary* definition of *cash price* in this context, a discount will be treated as generally available if most *customers* paying in cash are likely to be, or would reasonably expect to be, offered or given the discount.

Other financial promotions requiring a representative APR

3.5.7 R (1) A *financial promotion* must include the *representative APR* if it:

(a) ~~indicates in any way, whether expressly or by implication, including by means of the name given to the business or the product or of an address used by a business for the purposes of electronic communication, that:~~ states or implies that *credit* is available to *individuals* who might otherwise consider their access to *credit* restricted; or

~~(i) *credit* is available to persons who might otherwise~~

~~consider their access to *credit* restricted; or~~

~~(ii) any of the terms on which *credit* is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other *lender*; or~~

~~(iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other *lender*; or~~

~~[**Note:** regulation 6 of *CCAR 2010*]~~

(b) ~~includes an incentive (including but not limited to gifts, special offers, discounts and rewards) to apply for *credit* or to enter into an agreement under which *credit* is provided;~~ includes a favourable comparison relating to the *credit*, whether express or implied, with another *person*, product or service; or

(c) includes an incentive ~~(in the form of a statement about the speed or ease of processing, considering or granting an application, or of making funds available)~~ to apply for *credit* or to enter into an agreement under which *credit* is provided.

[**Note:** regulation 6 of *CCAR 2010*]

(2) The *representative APR* must be given ~~greater~~ no less prominence than any ~~indication or incentive~~ of the matters in (1).

…

3.5.8 G (1) A *firm's* trading name, website address or logo could trigger the requirements in *CONC* 3.5.7R(1).

(2) For the purposes of *CONC* 3.5.7R(1)(b), a comparison with another *person*, product or service includes a reference (whether stated or implied) to:

(a) the terms on which, or the way in which, *credit* is offered or made available; or

(b) the nature or quality or any other aspect of the service relating to the *credit* that the *person* offers or provides (or does not offer or provide).

The *financial promotion* does not need to specify a particular *person*, product or service for there to be a comparison.

(3) A *financial promotion* does not necessarily include a comparison where it merely refers to a *person*, product or service in a factual

manner, but there will be an implied comparison for the purposes of *CONC* 3.5.7R(1)(b) if it may reasonably be inferred that a comparison is being made.

(4) ~~Whether or not a reference to speed or ease in *CONC* 3.5.7R(1)(c) constitutes an incentive to apply for *credit* or enter into an agreement under which *credit* is provided would depend upon the circumstances, including whether~~ A statement about matters such as the speed or ease of processing, considering or granting an application, of entering into an agreement, or of making funds available, may constitute an incentive for the purposes of *CONC* 3.5.7R(1)(c). This will depend on the context of the statement and the circumstances in which it is made. A statement will be an incentive where it is likely to persuade or influence a *customer* to ~~take those steps or is merely a factual statement about the product or service~~ apply for *credit* or to enter into an agreement under which *credit* is provided, or is presented in a way which is likely to have that effect.

(5) Other examples of things which could be incentives are gifts, special offers, discounts and rewards.

…

Ancillary services

3.5.10 R (1) A *financial promotion* must include a clear, ~~and~~ concise and prominent statement in respect of any obligation to enter into a contract for an *ancillary service* where:

…

(2) The statement in (1) must be presented together with any *representative APR* included in the *financial promotion*.~~:~~

~~(a) be no less prominent than any information in *CONC* 3.5.5R(1) included in the *financial promotion*; and~~

~~(b) be presented together with any *representative APR* included in the *financial promotion.*~~

…

…

Restricted expressions

3.5.12 R (1) A *financial promotion* must not include:

…

(c) …; or

(d) ~~the expression "loan guaranteed", "pre-approved" or "no credit checks" or any similar expression, except where the agreement is free of any conditions regarding the credit status of the *customer*; or~~ [deleted];

…

…

3.6 Financial promotions about credit agreements secured on land

…

Statements in relation to security

3.6.5 R …

(2) Where, in the case of a *financial promotion*, the *security* comprises or may comprise a mortgage or charge on ~~the *customer's* home~~ a property used by the *customer* as a dwelling (whether or not the *customer's* primary residence):

…

…

Annual percentage rate of charge

3.6.6 R …

(6) In the case of a *financial promotion* relating to a *borrower-lender agreement* enabling the *customer* to overdraw on a current account under which the *lender* is the Bank of England or an ~~*authorised* person~~ *authorised person* with ~~permission~~ *permission* to accept deposits, there may be substituted for the *typical APR* a reference to the statement of:

…

…

Information ~~required~~ that CONC 3.6.4R(1) may require to be included in a financial promotion

3.6.10 R …

…

3.8 Financial promotions and communications: lenders

…

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

…

(2) ~~suggest or state, expressly or by implication,~~ state or imply that providing *credit* is dependent solely upon the value of the equity in property on which the agreement is to be secured; or

…

…

3.9 Financial promotions and communications: debt counsellors and debt adjusters

…

3.9.4A G *Firms* are reminded of:

(1) the *guidance* in *CONC* 3.3.10G(6) to (8) in relation to *debt solutions*; and

(2) the *rule* in *CONC* 8.2.4R which requires *firms* to notify the *customer* that free *debt counselling*, *debt adjusting* and *providing of credit information services* is available and that the *customer* can find out more by contacting the *Money Advice Service*.

3.9.5 R A *financial promotion* or a communication with a *customer* by a *firm* must not:

…

(2) falsely claim or imply in any way that the *firm* is, or represents, a charitable or *not-for-profit body* or government or local government organisation;

…

3.9.7 R A *firm* must not:

(1) unless it is a *not-for-profit debt advice body* or a ~~person~~ *person* who will provide such services, operate a look alike website designed to attract *customers* seeking free, charitable, not-for-profit or governmental or local governmental debt advice; or

…

3.10 Financial promotions not in writing

…

3.10.3 G *Firms* are reminded that:

(1) section 49 of the *CCA* makes it a criminal offence to canvass *borrower-lender agreement*s, for example cash loans, off trade premises (within the meaning of section 48 of the *CCA*); and

(2) section 154 of the *CCA* makes it a criminal offence to canvass off trade premises *credit broking* of a kind specified by article 36A(1)(a) to (c) of the *Regulated Activities Order*, *debt adjusting*, *debt counselling* or *providing credit information services* (within the meaning of section 153 of the *CCA*).

…

4 Pre-contractual requirements

4.1 Content of quotations

…

4.1.6 G For the purposes of *CONC* 4.1.5R(3)(c), a statement included in a quotation will not be treated as prominent unless it is presented, in relation to the other content of the quotation, in such a way that it is likely that the attention of the average *customer* to whom such a quotation is addressed would be drawn to it.

4.2 Pre-contract disclosure and adequate explanations

…

4.2.5 R …

(6) Where the *regulated credit agreement* is an agreement under which a ~~person~~ *person* takes an article in *pawn*:

…

…

…

4.2.7 G In deciding on the level and extent of explanation required by *CONC* 4.2.5R, the *lender* or *credit broker* should consider (and each of them should ensure that anyone acting on its behalf should consider), to the extent appropriate to do so, factors including:

(1) the type of *credit* being sought;

(2) the amount and duration of *credit* to be provided;

(2A) the actual and potential costs of the *credit*;

(2B) ~~and the associated cost and~~ the risk to the *customer* arising from the *credit* (the risk to the *customer* is likely to be greater the higher the total cost of the *credit* relative to the *customer's* financial situation);

(2C) the purpose of the *credit*, if the *lender* or (as the case may be) the *credit broker* knows what that purpose is;

(3) to the extent it is evident and discernible, the *customer's* level of understanding of the agreement, and of the information and the explanation provided about the agreement;

…

4.2.7A G (1) *CONC* 4.2.5R(1) requires the *customer* to be provided with an adequate explanation of the matters in *CONC* 4.2.5R(2). Where there is more than one *customer* acting together as 'joint borrowers', the *lender* or *credit broker* should consider whether it may be appropriate to give separate explanations to each *customer* and whether the explanation should be the same or different for each, rather than giving a single explanation to all of them jointly. (Where the *borrower* is a *partnership* or an unincorporated association, the members or *partners* may be treated as a single *customer*.)

(2) In deciding whether it is appropriate to give separate explanations to each *customer*, and in determining the level and extent of explanation required for each *customer*, the *lender* or *credit broker* should consider the factors in *CONC* 4.2.7G separately for each *customer*.

(3) However, *CONC* 4.2.5R(4) does not require an oral explanation of the matters in *CONC* 4.2.5R(2)(c) and (d) to be given to one *customer* simply because an oral explanation of the matters in *CONC* 4.2.5R(2)(a), (b) or (e) was given to a different *customer*.

…

Credit agreements where there is a guarantor etc

4.2.22 R (1) This *rule* applies if:

(a) a *firm* is to enter into a *regulated credit agreement*; and

(b) an *individual* other than the *borrower* (in this *rule* referred to as "the guarantor") is to provide a guarantee or an indemnity (or both) in relation to the *regulated credit agreement*.

(2) The *firm* must, before making the *regulated credit agreement*, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed decision as to whether to act as the guarantor in relation to the *regulated credit agreement*.

(3) The matters are:

(a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and

(b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.

(4) For the purposes of (2), the *rules* and *guidance* listed in (5) apply as if:

(a) references to the *customer* were references to the guarantor; and

(b) references to *CONC* 4.2.5R were references to this *rule*.

(5) The *rules* and *guidance* are:

(a) *CONC* 4.2.6G to *CONC* 4.2.7AG;

(b) *CONC* 4.2.9R and *CONC* 4.2.10R;

(c) *CONC* 4.2.12R to *CONC* 4.2.14G; and

(d) *CONC* 4.2.16G to *CONC* 4.2.21G.

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

4.2.23 R (1) *CONC* 4.2.22R does not apply to a *lender* if a *credit broker*, a solicitor, a barrister, (in Scotland) an advocate, or a relevant person has complied with that *rule* in respect of the agreement.

(2) Before a *lender* concludes that *CONC* 4.2.22R does not apply to it in relation to a *regulated credit agreement* by virtue of (1), the *lender* must take reasonable steps to satisfy itself that:

(a) an explanation complying with *CONC* 4.2.22R(2) has been provided to the guarantor; and

(b) the following had been provided to the *person* giving the explanation, before the explanation was given:

(i) a copy of the agreement;

(ii) if the guarantee or the indemnity (or both) is contained in a document other than the agreement, a copy of that document; and

(iii) a copy of any other document or information in writing relating to the agreement which had been provided to the guarantor by the *lender* or the *credit broker*.

(3) In this *rule*, "relevant person" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), and is not a solicitor, a barrister or (in Scotland) an advocate.

4.2.24 G *CONC* 4.2.23R permits the explanation required by *CONC* 4.2.22R to be given by a *credit broker*. It also permits the explanation to be given by a solicitor, a barrister, a Scottish advocate or another "relevant person" (for example, in the course of giving independent legal advice to the guarantor). The explanation may only be given by such a *person* if the information and documents listed in that *rule* had been provided to that *person*.

4.3 Adequate explanations: P2P agreements

…

Adequate explanations

…

4.3.7 G For the purposes of *CONC* 4.3.6R, a warning will not be treated as prominent unless it is presented in such a way that it is likely that the attention of the average *customer* would be drawn to it.

P2P agreements where there is a guarantor etc

4.3.8 R (1) This *rule* applies if:

(a) a *firm* with *permission* to carry on the activity of *operating an electronic system in relation to lending* is to facilitate the entry into a *P2P agreement*;

(b) the prospective *borrower* is an *individual*; and

(c) an *individual* other than the *borrower* (in this *rule* referred to as "the guarantor") is to provide a guarantee or an indemnity (or both) in relation to the *P2P agreement*.

(2) The *firm* must, before the *P2P agreement* is made, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed decision as to whether to act as the guarantor in relation to the *P2P agreement*.

(3) The matters are:

(a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and

(b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.

(4) For the purposes of (2), the *rules* and *guidance* listed in (5) apply as if:

(a) references to the *customer* were references to the guarantor;

(b) references to *CONC* 4.2.5R were references to this *rule*; and

(c) references to the *regulated credit agreement* were references to the *P2P agreement*.

(5) The *rules* and *guidance* are:

(a) *CONC* 4.2.6G to *CONC* 4.2.7AG;

(b) *CONC* 4.2.9R and *CONC* 4.2.10R;

(c) *CONC* 4.2.12R to *CONC* 4.2.14G; and

(d) *CONC* 4.2.16G to *CONC* 4.2.21G.

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

…

4.6 Pre-contract disclosure: continuous payment authorities

…

4.6.3 R A *firm* must include the terms of the *continuous payment authority*, in plain and intelligible language, as part of the *credit agreement* or *consumer hire agreement* presented to the *customer* or *P2P agreement* presented to the *borrower*.

[**Note**: paragraph 3.9miii of *DCG*]

4.6.4 R ~~A *firm* must set out, in plain and intelligible language, the scope of the agreed *continuous payment authority* and how it will operate.~~ [deleted]

~~[**Note:** paragraph 3.9miii of DCG]~~

Agreements where there is a guarantor etc

4.6.5 R (1) This *rule* applies if:

(a) a *firm* is to enter into a *regulated credit agreement* or a *regulated consumer hire agreement*, or is to facilitate the entry into a *P2P agreement*;

(b) an *individual* other than the *borrower* or the *hirer* (in this *rule* referred to as "the guarantor") is to provide a guarantee or an indemnity (or both) in relation to the *regulated credit agreement*, the *regulated consumer hire agreement* or the *P2P agreement*; and

(c) the guarantor is to grant a *continuous payment authority*.

(2) The *firm* must, before the guarantor provides the guarantee or the indemnity, provide the guarantor with an adequate explanation of the matters in *CONC* 4.6.2R(2).

(3) For the purposes of (2), *CONC* 4.6.2R(2) applies as if references to the *customer* were references to the guarantor.

(4) The *firm* must include the terms of the *continuous payment authority*, in plain and intelligible language, in the document that includes the guarantee or the indemnity (or both).

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

…

5.2 Creditworthiness assessment: before agreement

…

Proportionality of assessments

5.2.4 G …

(3A) Where the *customer* is borrowing for the purposes of a business, it may be reasonable to have regard to the *customer's* business plan for the purposes of an assessment required by *CONC* 5.2.1R or *CONC*

5.2.2R, but the assessment should not be based solely on that business plan.

(3B) Where there is more than one *customer* acting together as 'joint borrowers', the *lender* should consider whether it may be appropriate to assess each *customer* in accordance with *CONC* 5.2.1R or *CONC* 5.2.2R separately (as well as collectively), having regard to the risk to that *customer* arising from the *credit* being sought were the *customer* to be treated as being solely responsible for obligations of the joint borrowers under the agreement. (Where the *borrower* is a *partnership* or an unincorporated association, the members or *partners* may be treated as a single *customer*.)

…

Creditworthiness assessment where there is a guarantor etc

5.2.5 R (1) This *rule* applies if, in relation to a *regulated credit agreement*:

(a) an *individual* other than the *borrower* (in this *rule* referred to as "the guarantor") is to provide a guarantee or an indemnity (or both); and

(b) the *lender* is required to undertake an assessment of the *customer* under *CONC* 5.2.1R or *CONC* 5.2.2R.

(2) Before entering into the *regulated credit agreement*, the *lender* must undertake an assessment of the potential for the guarantor's commitments in respect of the *regulated credit agreement* to adversely impact the guarantor's financial situation.

(3) A *firm* must consider sufficient information to enable it to make a reasonable assessment under this *rule*, taking into account the information of which the *firm* is aware at the time the *regulated credit agreement* is to be made.

(4) For the purposes of (2), *CONC* 5.2.3G, *CONC* 5.2.4G and *CONC* 5.3.1G to *CONC* 5.3.8G apply as if:

(a) references to the *customer* were references to the guarantor; and

(b) references to *CONC* 5.2.2R(1) were references to *CONC* 5.2.5R(2).

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

5.2.6 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) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under *CONC* 5.2.5R, does not remove or reduce the obligation on the *lender* to carry out an assessment of the *borrower* under *CONC* 5.2.1R or *CONC* 5.2.2R. *Firms* are reminded of the *rule* in *CONC* 5.3.4R that the assessment of the *borrower* must not be based primarily or solely on the value of any *security* provided by the *borrower*.

…

5.5 Creditworthiness assessment: P2P agreements

…

Creditworthiness assessment where there is a guarantor etc

5.5.7 R (1) This *rule* applies if, in relation to a *P2P agreement*:

(a) the prospective *borrower* is an *individual*;

(b) an *individual* other than the *borrower* (in this *rule* referred to as "the guarantor") is to provide a guarantee or an indemnity (or both); and

(c) the *firm* is required to undertake an assessment of the prospective *borrower* under *CONC* 5.5.3R.

(2) Before the *P2P agreement* is made, the *firm* must undertake an assessment of the potential for the guarantor's commitments in respect of the *P2P agreement* to adversely impact the guarantor's financial situation.

(3) A *firm* must consider sufficient information to enable it to make a reasonable assessment under this *rule*, taking into account the information of which the *firm* is aware at the time the *P2P agreement* is to be made.

(4) For the purposes of (2), *CONC* 5.2.3G, *CONC* 5.2.4G and *CONC* 5.3.1G to *CONC* 5.3.8G apply as if:

(a) references to the *customer* were references to the guarantor;

(b) references to *CONC* 5.2.2R(1) were references to *CONC* 5.5.7R(2); and

(c) references to the *regulated credit agreement* were references to the *P2P agreement*.

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

5.5.8 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) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under *CONC* 5.5.7R, does not remove or reduce the obligation on the *firm* to carry out an assessment of the *borrower* under *CONC* 5.5.3R. *Firms* are reminded of the *rule* in *CONC* 5.3.4R that the assessment of the *borrower* must not be based primarily or solely on the value of any *security* provided by the *borrower*.

…

6.2 Assessment of creditworthiness: during agreement

…

6.2.1A R (1) This *rule* applies if, in relation to a *regulated credit agreement*:

(a) an *individual* other than the *borrower* (in this *rule* referred to as "the guarantor") has provided a guarantee or an indemnity (or both); and

(b) the *lender* is required to undertake an assessment of the *customer* under *CONC* 6.2.1R.

(2) Before doing either of the things mentioned in (1), the *lender* must undertake an assessment of the potential for the guarantor's commitments in respect of the *regulated credit agreement* to adversely impact the guarantor's financial situation.

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

6.2.2 R Where *CONC* 6.2.1R or *CONC* 6.2.1AR applies to a *firm:*

…

(2) the *rules* in *CONC* 5.3 referred to in (1) apply with the modifications necessary to take into account that *CONC* 6.2.1R concerns increases in the amount of *credit* and in *credit limits* and when the increase is to take place; ~~and~~

(3) the *guidance* in *CONC* 5.3 applies accordingly and *CONC* 5.2.3G and *CONC* 5.3.4R apply treating them as *guidance* on *CONC* 6.2.1R

or, as the case may be, on *CONC* 6.2.1AR; and

(4) for the purposes of *CONC* 6.2.1AR, the *rules* specified in (1), as modified by (2), and the *guidance* specified in (3) apply as if references to the *customer* were references to the guarantor.

6.2.3 R A *firm* must consider sufficient information available to it at the time of the increase referred to in *CONC* 6.2.1R to enable it to make a reasonable assessment required by that *rule* or *CONC* 6.2.1AR. The provision of the guarantee or indemnity (or both), and the assessment of the guarantor, does not remove or reduce the obligation on the *firm* to carry out an assessment of the *borrower* under *CONC* 6.2.1R. *Firms* are reminded of the *rule* in *CONC* 5.3.4R that the assessment of the *borrower* must not be based primarily or solely on the value of any *security* provided by the *borrower*.

…

6.7 Post contract: business practices

…

Continuous payment authorities: post agreement obligations

…

6.7.25A R (1) Paragraph (2) applies if an *individual* other than the *borrower* (in this *rule* referred to as "the guarantor") has:

(a) provided a guarantee or an indemnity (or both) in relation to:

(i) a *regulated credit agreement*; or

(ii) a *P2P agreement* in respect of which the *borrower* is an *individual*; and

(b) granted a *continuous payment authority*.

(2) *CONC* 6.7.24R and *CONC* 6.7.25R apply in respect of the guarantor as if references to the *customer* were references to the guarantor.

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

…

6.8 Post contract business practices: credit brokers

…

Refunds of brokers' fees

…

6.8.4 R Where section 155 of the *CCA* applies, a *firm* must respond promptly to a request for a refund; this includes making payment of the refund promptly if a refund is payable.

…

6.8.5 G …

(2) A *firm* should respond promptly to a request for a refund. *Firms* are reminded of the *rule* in *CONC* 11.1.12R to return sums without undue delay, and within 30 calendar days, on cancellation of a *distance contract*.

…

7 Arrears, default and recovery (including repossessions)

7.1 Application

…

Agreements where there is a guarantor etc

7.1.4 R (1) In this chapter, except for *CONC* 7.6.15AG:

(a) a reference to a *borrower*, a *customer* or a *hirer* includes a reference to an *individual* other than the *borrower* or the *hirer* (in this chapter, referred to as "the guarantor") who has provided a guarantee or an indemnity (or both) in relation to:

(i) a *regulated credit agreement*; or

(ii) a *regulated consumer hire agreement*; or

(iii) a *P2P agreement* in respect of which the *borrower* is an *individual*;

where it would not do so but for this *rule*;

(b) a reference (other than in this *rule*) to a *credit agreement*, a *consumer hire agreement* or a *P2P agreement* includes a reference to the document that includes the guarantee or the indemnity (or both);

(c) a reference to a *repayment* includes a reference to a payment due under the guarantee or under the indemnity;

(d) a reference to paying or repaying the debt includes a reference to making (in whole or in part) a payment due under the guarantee or under the indemnity; and

(e) a reference to the adequate explanation required by *CONC* 4.6.2R includes a reference to the adequate explanation required by *CONC* 4.6.5R.

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

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

7.1.5 G In relation to *CONC* 7.1.4(1)(a), *firms* are reminded that the definitions of *customer* and *borrower* include, in relation to *debt collecting* and *debt administration*, a *person* providing a guarantee or indemnity under the agreement. (See *CONC* 7.3.1G(2).)

…

7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors

…

Forbearance and due consideration

…

7.3.7 G ~~Where appropriate, a *firm* should direct a *customer* in default or in arrears difficulties to sources of free and independent debt advice.~~ [deleted]

7.3.7A G (1) If a *customer* is in default or in arrears difficulties, the *firm* should, where appropriate:

(a) inform the *customer* that free and impartial debt advice is available from *not-for-profit debt advice bodies*; and

(b) refer the *customer* to a *not-for-profit debt advice body*.

(2) A *firm* may refer the *customer* to a *not-for-profit debt advice body* by, for example, providing the *customer* with a copy of the current arrears information sheet under section 86 of the *CCA*, or with the name and contact details of a *not-for-profit debt advice body* or the *Money Advice Service*; or directly transferring the *customer's* call to a *not-for-profit debt advice body*.

(3) In addition, the *firm* may provide the *customer* with the name and contact details of another *authorised person* who has *permission* for *debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.

…

7.6 Exercise of continuous payment authority

…

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

…

7.6.15A G (1) Paragraph (2) applies where a guarantor has provided a guarantee or an indemnity (or both) in respect of *high-cost short-term credit*. (See *CONC* 7.1.4R for the meanings of "guarantor" and "guarantee".)

(2) *CONC* 7.6.12R and *CONC* 7.6.13R apply to a *continuous payment authority* granted by the borrower and to a *continuous payment authority* granted by a guarantor separately. This means that the *firm* may make up to two requests for payment under a *continuous payment authority* granted by the borrower and, if those requests are unsuccessful, up to two requests for payment under a *continuous payment authority* granted by the guarantor.

…

7.13 Data accuracy and outsources activities

…

7.13.3 R A *firm* must endeavour to ensure that the information it passes on to its agent or to a *debt collector* or to a tracing agent (a ~~person~~ *person* that carries on the activity in article 54 of the *Exemption Order*), whether for the *firm's* or another ~~person's~~ *person's* business, …

…

7.14 Settlements, disputed and deadlocked debt

…

7.14.10 R If a *firm* rejects a repayment offer because it is unacceptable, the *firm* must

not engage in any conduct intended to, or likely to, have the effect of intimidating the ~~customer~~ *customer* into increasing the offer.

…

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

…

Notice of sums in arrears for fixed-sum credit

…

7.17.5 R …

(4) A *firm* must accompany the notice required by *CONC* 7.17.4R with a copy of the current arrears information sheet under section 86A of the *CCA* with the following modifications:

(-a) for the heading "Arrears" substitute "Arrears – peer-to-peer lending";

…

…

…

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

…

7.18.3 R …

(2) A *firm* must accompany the notice required by (1) with a copy of the current arrears information sheet under section 86A of the *CCA* with the following modifications:

(-a) for the heading "Arrears" substitute "Arrears – peer-to-peer lending";

…

…

8.2 Conduct standards: debt advice

Overarching principles

…

8.2.2 G …

(2) Recommending a *debt solution* which a *firm* knows, believes or ought to suspect is unaffordable for the *customer* is likely to contravene *Principle* 2, *Principle* 6 and *Principle* 9 and may contravene other *Principles*. The *firm* should also take into account the expected term of the proposed *debt solution*, having regard to the *Principles.*

...

Signposting to sources of free debt counselling, etc

8.2.4 R A *debt management firm* must prominently include:

(1) in its first written or oral communication with the *customer* a statement that free *debt counselling*, *debt adjusting* and *providing of credit information services* is available to *customers* and that the *customer* can find out more by contacting the ~~Money Advice Service~~ *Money Advice Service*; and

(2) on its web-site the following link to the ~~Money Advice Service~~ *Money Advice Service* web-site…

…

CONC 9 (Credit reference agencies) is deleted in its entirety. The deleted text is not shown.

Amend the following as shown.

12 Requirements for firms with interim permission for credit-related regulated activities

…

12.1.4 R Table: Disapplication or modified modules or provisions of the Handbook

Module	Disapplication or modification
…	
Supervision manual	…
	SUP 6 (Applications to vary and cancel Part 4A permission

(*SUP*)	and to impose, vary or cancel requirements) applies:
	…
	(2) with the modifications to ~~SUP~~ *SUP* 6.3.15D and ~~SUP~~ *SUP* 6.4.5D set out in paragraph 1.2 of this Schedule.
	…
…	

…

13 Guidance on the duty to give information under sections 77, 78 and 79 of the Consumer Credit Act 1974

…

Failure to comply

13.1.6 G …

(4) The *firm* should, in any ~~communication or~~ request for payment or communication relating to a payment (other than a statement issued in accordance with the *CCA* or regulations made under it which does not constitute or contain a request for payment) in such cases, make clear to the *customer* that although the debt remains outstanding it is unenforceable.

…

Appendix 1 Total charge for credit rules

…

App 1.2 Total charge for credit rules for other agreements

…

Total charge for credit

…

App 1.2.3 R …

(2) Subject to (3), the following costs shall be included in the *total cost of credit to the borrower*:

(-a) any fee or charge payable by the *borrower* to a *credit broker* in connection with the agreement (if the fee or charge is known to the *lender*);

…

…

(7) The *total cost of credit to the borrower* must not take account of any discount, reward (including 'cash back') or other benefit to which the *borrower* might be entitled, whether such an entitlement is subject to conditions or otherwise.

Total cost of credit

App 1.2.3A G The *total cost of credit to the borrower* includes fee or charge payable by the *borrower* to a *credit broker*, if the fee or charge is known to the *lender*. *CONC* 4.4.2R(3) requires the *credit broker* to disclose their fee to the *lender*. *Lenders* should take reasonable steps to ascertain whether a fee is payable to the *credit broker* and, if so, the amount of the fee.

…

App 1.4 Exemption for high net worth borrowers and hirers and exemption relating to businesses

…

App 1.4.4 R A ~~person~~ *person* who is:

…

…

Transitional Provisions and Schedules

After CONC TP 6 insert the following new transitional provisions. The text is not underlined.

TP 7 Transitional provision in relation to the Consumer Credit (Amendment No 2) Instrument 2015

(1)	(2)	(3)	(4)	(5)	(6)

	Material to which the transitional provision applies		**Transitional provision**	**Transitional provision: dates in force**	**Handbook provision: coming into force**
7.1	*CONC*	R	The Consumer Credit (Amendment No. 2) Instrument 2015 does not have effect in relation to *credit agreements* secured on *land*, or to *credit broking* in relation to such agreements, except in so far as it amends *CONC* 3.6.	From 28 September 2015 to 21 March 2016	28 September 2015

…

Schedule 1 Record keeping requirements

…

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
…				
7.13.7R	…			
8.3.4AR(2)	The grounds for being satisfied that the *firm* is unlikely to enter into a contract with a *customer*.	The grounds for being satisfied that the *firm* is unlikely to enter into a contract with a *customer*.	When the *firm* becomes satisfied that it is unlikely to enter into a contract with the *customer*.	Not specified.
…				

Annex F

Amendments to the Perimeter Guidance manual (PERG)

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

Comes into force on 28 September 2015

2 Authorisation and regulated activities

…

2.3 The business element

…

2.3.2 G …

(4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting* or *carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract*, *entering into a home finance transaction* or *administering a home finance transaction*, *operating a dormant account fund*, *credit-related regulated activities* (subject to the modification for *not-for-profit bodies* in (3B)) and *operating an electronic system in relation to lending* ~~carried on by persons other than *not-for-profit bodies*~~.

…

2.7 Activities: a broad outline

…

Exempt agreements

2.7.19B G A *credit agreement* is not a *regulated credit agreement* for the purposes of *PERG* 2.7.19AG if it is an exempt agreement. *PERG* 2.7.19CG to *PERG* 2.7.19JG describe the categories of exempt agreement. Where part of a *credit agreement* falls within the exemptions in articles 60C to 60H of the *Regulated Activities Order*, only that part of the agreement is an exempt agreement.

…

Exemptions relating to number of repayments to be made

2.7.19G G A *credit agreement* is also an exempt agreement in the following cases:

(1) if (subject to *PERG* 2.7.19HG):

…

(b) the number of payments to be made by the borrower is not more than ~~four~~ 12;

…

…

(5) …

For the purposes of (1) to (5), "payment" means any payment which comprises or includes a *repayment*, a payment of interest or any other charge which forms part of the *total charge for credit*.

…

Exemptions relating to the total charge for credit

2.7.19I G A *credit agreement* is also an exempt agreement in the following cases:

…

(6) unless the agreement:

…

(b) is offered by a *lender* ~~who is an employer~~ to a *borrower* as an incident of employment with the ~~lender~~ *lender*, or with an *undertaking* in the same *group* as the *lender*;

…

…

2.8 Exclusions applicable to particular regulated activities

…

Credit broking

2.8.6C G The following activities are excluded from the *regulated activity* of *credit broking*:

…

Activities carried on by members of the legal profession

(6) Activities carried on by:

…

(b) a solicitor acting in the course of ~~contentious business~~ providing advocacy services or litigation services;

(c) a *person* acting in the course of ~~contentious business~~ providing advocacy services or litigation services who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;

are excluded from *credit broking*. For these purposes: ~~, business done in, or for the purposes of, proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business, is contentious business~~

(d) "advocacy services" means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings; and

(e) "litigation services" means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings.

…

Debt adjusting, debt counselling, debt collecting and debt administration

2.8.7C G …

(5) Activities carried on by:

…

(b) a solicitor acting in the course of ~~contentious business~~ providing advocacy services or litigation services;

(c) a *person* acting in the course of ~~contentious business~~ providing advocacy services or litigation services who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;

are excluded from *debt adjusting*, *debt counselling*, *debt collecting*

and *debt administration*. For these purposes: ~~, contentious business means business done in, or for the purposes of, proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business~~

(d) "advocacy services" means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings; and

(e) "litigation services" means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings.

…

2.11 Persons who are exempt for credit-related regulated activities

…

Charities

2.11.6 G The exemption from *operating an electronic system in relation to lending* in paragraph 44(A1) of the Schedule to the *Exemption Order* applies to a charity (as defined in article 3 to the *Exemption Order*) which carries on that activity in relation to an article 36H agreement (see *PERG* 2.7.7HG(4)). For the exemption to apply, the only amount payable to the *lender* under, or in connection with, the agreement must be the amount of *credit* provided; no interest or other charges may be added.

Process servers

2.11.7 G (1) Under paragraph 54A(1) of the Schedule to the *Exemption Order*, a *person* who serves, or takes steps to serve, a document on a *borrower* or a *hirer* for the purposes of legal proceedings, including arbitration and insolvency proceedings, brought or to be brought for the payment of a debt due under a *credit agreement*, a *P2P agreement* or a *consumer hire agreement* is exempted from *debt collecting*, as long as the *person*:

(a) is not the *lender* or *owner* under the agreement; and

(b) does not take any other steps to procure the payment of the debt or any other debt due from the *borrower* or the *hirer*

under the agreement.

(2) Under paragraph 54A(2) of the Schedule to the *Exemption Order*, a *person* who serves, or takes steps to serve, a document on a *borrower* or a *hirer* for the purposes of legal proceedings, including arbitration and insolvency proceedings, brought or to be brought for the exercise or enforcement of rights under a *credit agreement*, a *P2P agreement* or a *consumer hire agreement* is exempted from *debt administration*, as long as the *person*:

(a) is not the *lender* or *owner* under the agreement;

(b) does not take any other steps to exercise or enforce rights under the agreement; and

(c) does not take any steps in the performance of any duties under the agreement.

Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated credit agreement: special purpose vehicles

2.11.8 G (1) The exemption in paragraph 55 of the Schedule to the *Exemption Order* covers special purpose vehicles and other entities which are part of a structured finance transaction and which meet the specified conditions. It confers exemption from the *general prohibition* on a *person* ("P") for the *regulated activity* of *exercising, or having the right to exercise. the lender's rights and duties under a regulated credit agreement* (and associated *regulated activities*) where there is an arrangement for an *authorised person* who holds a relevant *permission* to service the loans, or such an arrangement has ended in the previous 30 *days*.

(2) The exemption is available to a *person* ("P") who:

(a) is not the original *lender*;

(b) does not grant or promise to grant, and is not required to grant, *credit* under any *regulated credit agreement*;

(c) has entered into a servicing arrangement with an *authorised person* who has permission to carry on the *regulated activities* of *debt collecting, debt administration* or *consumer credit lending* ("the servicer"), under which the servicer is to exercise on P's behalf P's rights under a *regulated credit agreement* (other than P's right to dispose of those rights); and

(d) does not undertake the regulated activities of *debt counselling, debt adjusting* or *debt collecting* in relation to a *regulated credit agreement* other than during an "exempt period". An "exempt period" is the period of 30 *days*

beginning on the *day* after the *day* on which a servicing arrangement came to an end. Where, for example, a servicing agreement comes to an end suddenly or unexpectedly, P has a grace period of 30 *days* to find a new servicer and enter into a new servicing arrangement, and may service its own loans in that period without being authorised.

(3) In addition, P must have arranged for the servicer to comply with:

(a) any provision of, or made under, the *Act* applicable to *authorised persons* that relates to the exercise of the right of the *lender* under a *regulated credit agreement* to vary terms and conditions of the agreement; and

(b) the requirements of, or made under, section 82 of the *CCA* (variation of agreements).

Where P varies the agreement itself, P must comply with those provisions and requirements.

(4) Where P is exempt (as set out above), the exemption also extends to the *regulated activities* of *debt counselling* and *debt collecting* carried on in an exempt period in relation a *regulated credit agreement* under which P exercises, or has the right to exercise, the rights of the original *lender*.

(5) For the purposes of this exemption, activities carried on by P under, or for the purposes of, a servicing arrangement are excluded from the *regulated activities* of *debt counselling* and *debt collecting* in relation to a *regulated credit agreement.*

Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated consumer hire agreement: special purpose vehicles

2.11.9 G Paragraph 56 of the Schedule to the *Exemption Order* confers an exemption analogous to that in paragraph 55 of the Schedule to the *Exemption Order* and described in *PERG* 2.11.8G. It applies to the *regulated activity* of *exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement*.

…

8.14 Other financial promotions

…

Governments, central banks etc (article 34)

8.14.17A G A *local authority* (in the *United Kingdom* or elsewhere) is exempt from the *financial promotion* restriction (that is, the restriction in section 21 of the *Act*) for a communication which is a *non-real time financial promotion* or a *solicited real time financial promotion*. However, this exemption does not apply to a communication which relates to a *regulated credit agreement*, where entering into the agreement or exercising, or having the right to exercise, the *lender's* rights and duties under the agreement constitutes the carrying on of an activity of the kind specified in article 60B of the *Regulated Activities Order* (and where the exclusion in article 72G of that Order does not apply).

…

Insolvency practitioners (article 55B)

8.14.34A G The *financial promotion* restriction (that is, the restriction in section 21 of the *Act*) does not apply to a communication which is a *non-real time financial promotion* or a *solicited real time financial promotion* by an insolvency practitioner who acts in that capacity (see the definition of "acting as an insolvency practitioner" in article 3 of the *Regulated Activities Order*). The exemption only applies where the communication is made in the course of carrying on an activity which is excluded from being a *regulated activity* by virtue of article 72H of the *Regulated Activities Order* (see *PERG* 2.9.25G and *PERG* 2.9.26G).

…

Credit agreements offered to employees by employers (article 72F)

8.14.40 AEA G Article 72F exempts any *financial promotion* which is made to an employee by or on behalf of a *person* in relation to an exempt staff loan. An exempt staff loan is defined as a *credit agreement* which is:

(1) ~~entered into by the employee as *borrower* and the employer, or an undertaking in the same group as the employer, as *lender*~~ offered by a *lender* to a *borrower* as an incident of employment with the *lender*, or with an undertaking in the same group as the *lender*; and

…

…

8.17-A Financial promotions concerning consumer credit and consumer hire

…

Controlled activities

…

8.17-A.8 G The *controlled activities* in *PERG* 8.17-A.6G and *PERG* 8.17-A.7G are substantially the same as the *regulated activities* of *operating an electronic system in relation to lending*, *credit broking*, *debt adjusting* and *debt counselling* (although ~~there are some technical differences between the *controlled activity* of credit broking and the *regulated activity* of credit broking. For example, the credit broking *controlled activity* captures all relevant credit agreements (including those to which the exemption relating to number of repayments to be made in article 60F of the *Regulated Activities Order* applies). Also,~~ an activity is not the *controlled activity* of credit broking to the extent that it constitutes the *controlled activity* of arranging *qualifying credit*). Guidance on these *regulated activities* is given in *PERG* 2.7.7EG (credit broking), *PERG* 2.7.7HG (operating an electronic system), *PERG* 2.7.8BG (debt adjusting) and *PERG* 2.7.8CG (debt counselling). Agreeing to carry on the above activities also constitutes a *controlled activity*.

…

8.21 Company statements, announcements and briefings

…

Article 59: Annual accounts and directors' reports

8.21.11 G Article 59 is capable of applying to *financial promotions* in *company* statements and briefings where they are accompanied by:

…

(2) any report prepared and approved by the directors of such a *company* under ~~section 234 and 234A of the Companies Act 1985 or~~ <u>sections 414A and 414D of the Companies Act 2006 (strategic reports) or sections 415 and 419 of that Act (directors' reports), or</u> corresponding legislation ~~in Northern Ireland or~~ in another *EEA State*.

Financial Conduct Authority

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