Financial Conduct Authority

Consumer credit – proposed changes to our rules and guidance

February 2015

Consultation Paper

CP15/6**

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We are asking for comments on this Consultation Paper by 6 May 2015.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp15-06-response-form.

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You can download this Consultation Paper from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.

Abbreviations used in this paper

APR	Annual percentage rate of charge
CBA	Cost benefit analysis
CCA	Consumer Credit Act 1974
CCD	Consumer Credit Directive
CMA	Competition and Markets Authority
CONC	Consumer Credit sourcebook
COND	Threshold Conditions sourcebook
CP	Consultation paper
CPA	Continuous payment authority
CRA	Credit reference agency
DISP	Dispute Resolution: Complaints sourcebook
EIA	Equality impact assessment
FAQ	Frequently asked question
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
HCSTC	High-cost short-term credit
ICOBS	Insurance: Conduct of Business sourcebook
LRRA	Legislative and Regulatory Reform Act 2006
MCD	Mortgage Credit Directive
MCOB	Mortgages: Conduct of Business sourcebook
NFP	Not-for-profit
OFT	Office of Fair Trading

PERG	Perimeter Guidance manual
PRIN	Principles for Businesses sourcebook
PS	Policy statement
P2P	Peer-to-peer
SI	Statutory instrument
SUP	Supervision manual

1. Overview

Introduction

1.1 This consultation paper sets out proposals for amendments to our consumer credit regime, and invites views on them.

1.2 Our key proposals in this consultation paper are:

- **Guarantor lending**: to require firms to provide adequate pre-contract explanations to guarantors and to assess the guarantor's creditworthiness. Also, to impose other obligations on firms regarding guarantors, including treating guarantors fairly and with forbearance if they are in financial difficulty.
- **High-cost short-term credit (HCSTC)**: to remove the exemption from the requirement to include a risk warning in financial promotions.
- **Financial promotions**: to amend our rules regarding relative prominence and the circumstances in which promotions must include a representative annual percentage rate of charge (APR), and to restate as a rule the current guidance on Principle 7 (that communications should be clear, fair and not misleading).
- **Arrears, default and collection**: to amend our rules to reflect our policy intention and allow firms to introduce continuous payment authority (CPA) to collect repayments where a customer is in arrears or default and the lender is exercising forbearance.

1.3 Some of these amendments are intended to address areas of harm to consumers that have come to light through our early experience of supervising the consumer credit market. Others are clarifications or amendments to ensure our rules clearly reflect our policy intention, or deal with issues raised by firms, trade bodies, consumer groups and other stakeholders.

1.4 We are also inviting views on whether to retain or modify the rules on **credit broking** that were introduced in PS14/18[1], and whether to introduce additional rules.

1.5 This paper also contains proposals for amendments to our Consumer Credit sourcebook (CONC) in relation to implementation of the Mortgage Credit Directive (MCD).

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

Who should read this paper?

1.6 This consultation paper will be of interest to:

- 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, and
- consumer organisations

1.7 This paper will 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, may want to comment on our proposals.

Context

1.8 On 1 April 2014 we took over the regulation of consumer credit from the Office of Fair Trading (OFT). This brought around 50,000 consumer credit firms into our scope.

1.9 In preparation for taking over credit regulation, we consulted on proposals in October 2013[2] and published consumer credit rules in February 2014.[3]

1.10 In most cases, the rules were intended to replicate repealed provisions of the Consumer Credit Act (CCA) and OFT fitness guidance. We made clear that our aim was to carry these across in substantially the same form and with substantially the same effect as previously, so that firms already complying were unlikely to need to change their behaviour. We also introduced some new rules in relation to HCSTC, debt management and peer-to-peer (P2P) lending.

1.11 A number of our rules, and residual CCA provisions, implement the Consumer Credit Directive (CCD) which is full (maximum) harmonisation in certain areas.

1.12 We published a quarterly consultation paper in June 2014[4], proposing further minor amendments to CONC and other sourcebooks, and these were finalised in a Handbook notice published in September 2014.[5]

1.13 We published proposals for a price cap on HCSTC in July 2014, and final rules in November 2014.[6] These came into force on 2 January 2015.

2 *Detailed proposals for the FCA regime for consumer credit,* CP13/10, October 2013.

3 *Detailed rules for the FCA regime for consumer credit (including feedback on FCA QCP 13/19 and 'made rules')*, PS14/3, February 2014.

4 *Quarterly consultation No. 5*, CP14/8, June 2014.

5 www.fca.org.uk/your-fca/documents/handbook-notices/fca-handbook-notice-15

6 *Detailed rules for the price cap on high-cost short-term credit (including feedback on CP14/10 and final rules)*, PS14/16, November 2014.

1.14 We published proposals in September 2014 for implementation of the MCD and a new regime for second charge mortgages.[7] This consultation closed on 29 December, and a policy statement will be published shortly.

1.15 We published new rules on credit broking on 1 December 2014, and these also came into force on 2 January.[8]

Structure of paper

1.16 The following chapters discuss our proposals in detail:

- Chapter 2 – Credit brokers
- Chapter 3 – Lending issues
- Chapter 4 – Financial promotions
- Chapter 5 – Debt issues
- Chapter 6 – The Mortgage Credit Directive

1.17 Chapter 7 sets out next steps, and highlights some of the issues that we expect to feature in a further consultation paper later in the year.

1.18 Annex 2 is a detailed cost benefit analysis.

1.19 Annex 3 is a compatibility statement. We are satisfied that the proposed changes are compatible with our strategic objective, and advance one or more of our operational objectives (in particular, consumer protection), and are consistent with our competition duty in section 1B (4) Financial Services and Markets Act (FSMA). We are also satisfied that the proposals do not have an effect on mutual societies that is significantly different from their effect on other authorised persons.

1.20 Annex 4 is an equality impact assessment. We have assessed the likely equality and diversity impacts of the proposals and do not consider that they have a potentially discriminatory impact on groups with protected characteristics.

1.21 In this paper, references to 'lender' include the owner under a consumer hire agreement, and references to 'credit agreement' include a consumer hire agreement, unless the context makes clear otherwise.

7 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages*, CP14/20, September 2014.

8 See footnote 1 and Chapter 2.

Commencement of our proposals

1.22 Following the conclusion of our consultation process, we intend that our final rules and guidance will come into effect one month after the instrument is made by our Board, with the exception of the proposals relating to the use of CPA as a debt recovery mechanism, not-for-profit debt advice bodies and complaints procedures and debt advice in a durable medium which will come into effect immediately after the instrument is made.

Next steps

1.23 We want to know what you think about the specific proposals in this paper, and the more general issues raised in relation to credit broking. Please respond to our questions by **Wednesday 6 May**. You can find a list of questions at Annex 1.

1.24 Please respond to this consultation by using the online response form on our website or write to us at the address on page 2.

1.25 We will consider your feedback, and aim to publish a policy statement with final rules and guidance in the summer.[9]

9 We are allowing slightly less than the usual three months for responses, to allow sufficient time to consider responses and finalise and publish a policy statement during the summer.

2. Credit brokers

Introduction

2.1 This chapter sets out:

- the new rules relating to credit broking we published in PS14/18 and an analysis of their costs and benefits
- responses to questions we have received in relation to the new rules
- consultation on whether to retain the rules (with a minor modification)
- consultation on proposed new rules in relation to credit broking, and
- discussion of wider issues on which we are seeking views, including whether to introduce additional rules and guidance as part of a subsequent consultation paper.

PS14/18 – Credit broking and fees

2.2 We published new rules on credit broking in PS14/18 on 1 December 2014.[10] We did so without consultation, in reliance on section 138L FSMA, on the grounds that the delay involved in consulting would be prejudicial to the interests of consumers.

2.3 The rules were made because we had significant concerns about the practices of some credit brokers – particularly in HCSTC and other sub-prime credit markets – which were charging upfront fees to consumers. Our concerns included:

- consumers not realising they were dealing with a broker rather than a lender
- a lack of informed consent to the taking of fees, for example where terms and conditions were hidden or misleading
- consumers being misled as to the purpose of giving their payment details
- firms passing on consumers' details, including their payment details, without informed consent, to other firms who would also take a fee, and
- consumers facing difficulty in identifying the firm that had taken a payment (and in obtaining a refund from the firm or a response to their complaint)

10 www.fca.org.uk/news/ps14-18-credit-broking-and-fees

2.4 There was evidence that such practices were causing substantial harm to consumers, including vulnerable consumers and those in financial difficulty.

2.5 The new rules in PS14/18 comprise the following elements.

Fees and payment details

2.6 The CONC 4.4 rules prohibit credit brokers from charging fees to customers, and from requesting payment details for that purpose, unless:

- the firm has provided an explicit notice to the customer, in a durable medium[11] (an information notice), stating the following:
  - the firm's legal name
  - that it is (or is acting as) a credit broker and not a lender
  - that the customer will (or where relevant may) be required to pay a fee in connection with the firm's services
  - the amount of the fee (or the basis of calculation)
  - when and by what means the fee will be payable
- the customer has acknowledged receipt of the information notice, and awareness of its contents, in a durable medium (the customer confirmation)

2.7 The information notice may also include the firm's trading name and contact details, but must not include any other information or statements. The information must be clear and concise and in plain language. The firm should keep a record of each information notice and each customer confirmation for at least 18 months.

2.8 If a firm takes payment details to pass them on to another credit broker, that latter firm is prohibited from using them to charge a fee until it has issued its own information notice to the customer and received its own customer confirmation.

2.9 These rules apply to all fee-charging credit brokers, other than where the firm makes clear that it will only be broking credit agreements secured on land. They apply irrespective of whether the broking relates to a regulated credit agreement.[12]

Transparency

2.10 The CONC 3.7 rules require credit brokers to state their legal name (as it appears in the FCA Register) in all financial promotions and communications with customers.

2.11 They also require brokers to state prominently in any financial promotion that they are (or are acting as) a credit broker and not a lender.

2.12 These rules apply to all credit brokers (irrespective of whether they charge a fee) unless the financial promotion or communication indicates clearly that it is made solely in relation to the broking of credit agreements secured on land.[13]

11 As defined in: http://fshandbook.info/FS/html/FCA/Glossary

12 See CONC 4.4.1AR.

13 CONC 3.7 also does not apply to a financial promotion or communication which indicates clearly that it is solely promoting credit agreements for the purposes of a customer's business – see CONC 3.1.6R.

2.13 In addition, fee-charging credit brokers must notify the FCA quarterly of their web domain names. This must be done by email, fax or postal return, or by hand, within 30 business days of the relevant date (the first return is due by 15 May 2015).

Cancellation rights

2.14 The CONC 11 rule provides that the customer has a right to cancel a credit broking agreement which is a distance contract within 14 calendar days.

2.15 This applies to all credit brokers, including for agreements secured on land.

Costs and benefits of the PS14/18 rules

2.16 We did not prepare and publish a cost benefit analysis (CBA) for the new rules in PS14/18 before making them, for the reason given in paragraph 2.2 above. However, as part of the decision-making leading to the new rules, we did carry out an assessment of the expected costs and benefits of the rules in order to satisfy ourselves on proportionality. We are publishing information in relation to that assessment in the interests of transparency.

2.17 This assessment represents the information we had available to us at the time we assessed the proportionality of our proposals. As we made the rules under section 138L FSMA, as the time required for consultation would have been prejudicial to the interests of consumers given the strong evidence of significant consumer harm, we were not required to carry out a CBA and this assessment does not represent such an analysis.

2.18 The key elements of the assessment are summarised below.

Benefits

2.19 We noted in PS14/18 that there had been a recent acceleration of complaints and other evidence of harm to consumers in this area. Some 41% of complaints about consumer credit we had received since 1 April 2014 related to credit broking, and around 80% of those were about online brokers charging upfront fees.

2.20 The presence of significant harm to consumers was corroborated by information from other sources, including banks and consumer organisations.

2.21 Evidence from several large banks detailed a significant increase in the number of unrecognised transactions, driven primarily by brokers active in the HCSTC market:

- One bank reported that it was receiving about 15,000 calls a month from customers who had applied for HCSTC loans through online brokers and had one, two or three fees debited from their accounts from firms they did not recognise.
- Another bank reported that, having seen a significant rise in such unrecognised transactions, it had put in place mitigating controls. During October 2014, these had captured some 130,000 attempted transactions on nearly 9,000 accounts.
- A third bank reported that having put similar preventive strategies in place, it was declining around 1 million transactions a month, attempted mainly by brokers, on around 40,000 unique customer accounts.

- Despite these strategies, banks reported a significant continuing volume of disputed or unrecognised transactions related to hidden fees by brokers.

2.22 The Competition and Market Authority's (CMA) findings on payday lending showed a clear lack of transparency. The CMA reviewed 125 main websites of payday loan lead generators in September 2014, and found only 3% of these stated clearly before the point at which a customer could enter their details that the service provided was that of a lead generator or broker rather than a lender.

2.23 Reports by Citizens Advice, Citizens Advice Scotland and the Financial Ombudsman Service (the ombudsman service) also detailed problems in the market:

- Citizens Advice reported in August 2014 that it had seen a substantial increase in credit broking cases (up by 148% over the past year). Most clients (72% of 1,549 cases) had come across the broker while searching for credit online, and many assumed they were applying for a loan direct from a lender.

- Citizens Advice Scotland reported in August 2014 that credit broker cases had increased by 42% over the previous year. 28% of cases involved personal details being passed on to numerous other brokers. In 22% of cases the consumer was denied a refund despite asking for one within the 14 days allowed under law.

- The ombudsman service reported in August 2014 that most consumer complaints about payday loans related to problems with broking – in particular, where the consumer did not recognise the business that took the fee or did not give permission for a fee to be taken.

2.24 Based on a combination of the above, and complaints received by the FCA, we estimated that ongoing annual harm from certain practices regarding credit broking fees was approximately **£30m to £60m**, affecting some 300,000 to 600,000 customers, with an average loss of £100 per customer.

2.25 Some 80% of the complaints and alerts related to authorised firms, with the other 20% relating to unauthorised firms. Since our rules are unlikely to directly impact the latter group (without additional enforcement action), we estimated the potential maximum benefits of additional rules to be **£24m to £48m**.

2.26 We were conscious that rule changes alone would not eliminate all the harm, and would need to be supported by incremental supervisory and enforcement action.[14] Additionally, the benefits depended significantly on customers changing behaviour based on improved information, and some customers might not do so (for example, because of behavioural biases). We therefore conservatively estimated a scenario where 20% to 30% of the maximum potential benefit would be achieved through our rule changes.

2.27 This generated estimated annual benefits of **£5m to £15m**.

2.28 The benefits from our rules were anticipated to arise in two ways:

- First, consumers were likely to become more aware of the identity and status of the firm they were dealing with, and (where applicable) that a fee may be charged. The rules should make it easier for consumers to identify when a firm's practices in relation to fees and payment details might be harmful, and to avoid scams.

14 We have been investigating a number of firms. As at mid-February, ten firms have been stopped from taking on new business, and three further cases have been referred for enforcement action.

- Second, the rules should make it easier for the FCA to supervise and enforce compliance, in part through creating an improved audit trail.

Costs

2.29 To understand the impact of our proposed rules on the market, we surveyed 816 firms. We received 109 replies from firms currently carrying out credit broking activities. Applying a series of assumptions, we extrapolated survey responses to estimate impacts across the industry. These impacts are summarised below.

2.30 We estimated that the proposals were likely to give rise to one-off costs to firms of **£0.6m to £4m**, attributable to direct compliance costs in terms of changing processes, documentation, websites and staff training.

2.31 We also estimated ongoing annual costs of **£2m to £5.6m**. These included:

- Direct compliance costs of £0.3m to £1.2m arising mainly from the incremental cost of having to provide notices
- Indirect compliance costs of £1.5m to £4m due to the increased time necessary to apply for credit products through brokers[15]
- Residual ongoing costs of £0.2m to £0.4m per year arising from changes in broker incentives and consequent competition effects. This was the estimated cost impact, in terms of reduced price transparency, if the proposals were to incentivise firms to roll up broker fees into the loan

Conclusion

Table 1 – Summary of costs and benefits

	One-off			**On-going (annual)**		
	Min	*Mid*	*Max*	*Min*	*Mid*	*Max*
Costs	£0.6m	£2.3m	£4m	£2m	£3.8m	£5.6m
Benefits (scenario where 20%-30% of detriment is prevented)				£5m	£10m	£15m

2.32 A summary of the costs and benefits is presented in Table 1.

2.33 Note that the estimates of costs were based on a survey of a limited sample of firms, which may not have captured all types of business models in the market. We have therefore treated these estimates as conservative to accommodate a margin of uncertainty. As discussed in paragraph 2.16, this assessment was carried out in order to assess the proportionality of the rules we proposed to make and did not constitute a CBA.

2.34 Working within these limitations, our assessment of the impacts concluded that making these rules was a proportionate response to the evidence of serious consumer harm we were seeing. As set out in Annex 3, we were satisfied that making the rules was compatible with our

15 The increased time and complexity of applying for credit through brokers, relative to applying directly to lenders, might cause some consumers to stop using brokerage services. However, we were not of the opinion that any resulting disintermediation of consumer credit markets would be economically significant. We did not therefore attempt to measure this impact in our preliminary analysis. We also did not have sufficient information to estimate indirect costs such as possible changes in the quality of brokerage services.

strategic objective, and advanced one or more of our operational objectives (in particular, consumer protection), and was consistent with our competition duty.

2.35 We further took the view that bringing the rules into force on 2 January 2015 allowed firms a reasonable period in which to make necessary changes, balanced against the need to act swiftly to minimise consumer harm.

Questions on the new rules and consultation on whether to retain or modify

2.36 We made clear in PS14/18 that, although we were not required to consult on the new rules in draft (see paragraph 2.2 above), we intended to invite views subsequently on whether to retain or modify the rules.

2.37 We have no reason to believe that the rationale that led to the introduction of the rules in PS14/18 is no longer applicable, or that the likely benefits of the changes do not substantially outweigh the costs.

2.38 We have received a number of comments and queries from firms and trade bodies in response to PS14/18, but these have not caused us to change our view. In some cases, the comments reflected a misunderstanding of the scope of the new rules or their application in particular situations, which we have sought to clarify.

2.39 For example, some firms queried whether the rules on information notices apply if a firm only takes payment details to pass them on to a lender to facilitate payment to the lender. They do not. We would however remind firms of their obligations under the Data Protection Act and CONC 2.5 in terms of passing on personal data to a third party.

2.40 Some firms queried whether the rules on information notices apply if the broker is remunerated by the lender, by way of commission. They do not apply, provided that the broker does not charge the customer for its services. However, the rules do apply if the lender or another third party takes a fee from the customer on the broker's behalf and passes it on to the broker. As noted in PS14/18, references to a 'charge' include any fee, charge or financial consideration, however described, and irrespective of whether the fee is payable direct to the broker or via a third party.

2.41 Others queried whether the rules are limited to loans to consumers or whether they extend to business lending. The rules on information notices apply to all fee-charging credit brokers, irrespective of whether the broking relates to a regulated credit agreement – this would include loans for business purposes, to sole traders, small partnerships or unincorporated bodies, even if the credit agreement itself is exempt from regulation.[16] Note however that the CONC 3 rules do not apply where the financial promotion or communication indicates clearly that it is solely promoting credit for business purposes, and the cancellation rules in CONC 11 are limited to consumers.

2.42 A number of stakeholders were unclear whether the rules apply to the broking of second charge mortgages and other loans secured on land. They do not, other than in relation to cancellation rights, although firms need to take care to ensure that their services are clearly limited to broking such loans.

16 Article 36A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, includes broking of agreements which are exempt, for example under article 60C.

2.43 Some stakeholders wrongly assumed that all the rules apply only to fee-charging credit brokers, or online business only. As noted above, the rules relating to financial promotions and communications, and cancellation rights, apply (with some exceptions) to all credit brokers, irrespective of whether a fee is charged.

2.44 In addition, there was some uncertainty about the new requirement to notify details of web domain names. This applies only to fee-charging credit brokers, but it applies irrespective of whether the firm is authorised by virtue of having an interim permission (in contrast to other SUP requirements which apply only once a firm is fully authorised).

2.45 We are now proposing a small modification to the PS14/18 rules to **amend SUP 16.12** in relation to the process for notifying details of web domain names (CCR008 data) to facilitate the process for firms. Currently this must be provided by email, fax or postal return, or by hand (and this will remain the case for the initial returns which will be due by 15 May 2015).

2.46 We intend to add the relevant data field to the FCA's GABRIEL system as part of a June 2015 release, and to require firms with full authorisation to report via GABRIEL once this is done. We also propose to align the reporting frequency to that under GABRIEL. Pending full authorisation, firms with interim permission will continue to report by email etc but in addition we propose to allow online submission using a 'survey tool', to facilitate compliance. We will send firms a link to this tool in due course.

2.47 With that one small exception, we do not propose to make any changes to the rules published in PS14/18, but would welcome views on this from stakeholders.

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

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

Consultation on some minor additional rules

2.48 We also stated in PS14/18 that we would be consulting on whether to introduce additional rules for credit brokers.

2.49 We are proposing some minor rule changes, as set out below. However, we are not proposing any substantive new rules at this stage. We consider it important to allow time to evaluate the impact of the rules published in PS14/18 and the extent to which they have addressed the harm which we identified. That will then enable an assessment of whether additional rules are needed, and if so, in what areas.

2.50 We are currently proposing the following changes in relation to credit brokers. We are satisfied that these proposals will not increase costs, or any increase will be of minimal significance, and so the proposals do not require a CBA.

- **CONC 2.5.8R(2)** – to clarify that firms must comply *either* with (a) to (c) (which are to be combined as (ca)) *or* with (d), i.e. these are not cumulative. This reflects the scope of the Privacy and Electronic Communications (EC Directive) Regulations.

- **CONC 2.5.8R(14)** – to amalgamate this with 2.5.8R(15), so that both apply in relation to insurance products and services (including payment protection products) and other linked products and services. The only reason they do not currently is because they derive from separate OFT guidance documents.

- **CONC 2.5.8R(20)** – to clarify that a fee must not be taken from the customer's payment account without express authorisation. The proposal is that this restriction applies to all forms of payment account, and not merely bank accounts.

- **CONC 6.8.4R** – to clarify that a firm must respond promptly to a request for a refund under section 155 CCA, including making payment promptly where a refund is due.

- **CONC App 1.2.3R** – to clarify that a fee or charge payable by the customer to a credit broker must be factored into the APR in the credit agreement. It may similarly need to be taken into account in determining the representative APR in advertising. Brokers are required under CONC 4.4.2R(3) to notify any fee to the lender so that it can be included in the APR.

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

Developing our future policy on credit broking

2.51 As noted above, we propose to defer consideration of additional substantive rules on credit broking pending the outcome of this consultation and our evaluation of the impact of the rules in PS14/18.

2.52 We will also be considering the CMA's remedies and recommendations arising from its payday lending market investigation and what changes may be needed to our rules.

2.53 In addition, to aid policy development we are taking the opportunity to invite views and evidence more generally on appropriate remuneration structures and processes for credit brokers, and whether and to what extent we should consider additional or different rules. We would welcome views from stakeholders to help inform the development of policy in this area.

Forms of remuneration

2.54 A credit broker can be remunerated for its services in a number of ways:

- **by charging a fee to the customer**

2.55 Some credit brokers charge the borrower a fee. There are rules on credit broking fees in CONC 2.5 (conduct of business: credit brokers), CONC 3.7 (financial promotions and communications) and CONC 4.4 (pre-contractual requirements including information notices), and in CONC 6.8 which deals with refunds.

- **by receiving a commission**

2.56 This could include a fee or commission or other remuneration from the lender, or from a third party (such as an insurer for linked insurance such as payment protection or gap insurance). There are rules relating to commissions in CONC 2.5 and 3.7, and CONC 4.5 deals specifically with payment of commissions by lenders and disclosure by brokers.

2.57 In some cases, the commission may be a percentage of the interest rate payable by the borrower and the broker may be able to influence this, for example by having discretion to set a higher rate for an individual customer (with the difference being rebated back by the lender to the broker). This is treated as a commission not a fee, unless the customer's payment is routed through the broker (rather than paid to the lender direct). In this case an element may constitute a broker's fee and so would be subject to the requirements in PS14/18 regarding information notices.

- **through the price of goods or services**

2.58 This may occur where the broker is the supplier of goods or services financed by the credit and so has discretion over the price charged. This could incorporate an element regarding the cost of the broker's services. The cash price is required to be stated in the credit agreement and pre-contract credit information.

- **through the cost of premium rate services**

2.59 The broker may require contact via a premium rate telephone number, with an element of the cost being rebated to the broker. There are rules in CONC 2.5 prohibiting unfair use of premium rate lines, and PhonepayPlus (the primary regulator of premium rate services) has issued relevant guidance aimed particularly at credit brokers.[17] The cost of the premium rate call must be factored into the APR for the credit agreement.

Views invited

2.60 We would welcome views on appropriate forms of remuneration for credit brokers, including the advantages and disadvantages (for firms and for consumers) of fees (from the customer) or commissions (from a lender or third party).

2.61 In particular, we would welcome any information or evidence that stakeholders can provide regarding the nature and extent of the risks to consumers arising from different forms of remuneration (including any not listed above).

2.62 We would be interested to learn about measures that firms have put in place to mitigate such risks and the extent to which these have been successful.

2.63 We would also welcome suggestions for additional FCA rules or guidance, to embed good practice across the market, and to facilitate effective supervisory or enforcement action where firms are not treating customers fairly or are acting improperly.

2.64 Such rules or guidance might apply across the board, or be limited to specific sectors or types of credit broking, or it might be appropriate to have different rules and guidance applying in different areas, reflecting the degree of risk to consumers. For example, different issues may arise in relation to the broking of loans for business purposes.

17 www.phonepayplus.org.uk/News-And-Events/News/2014/12/PhonepayPlus-publishes-changes-to-its-regulatory-framework-for-consumer-credit-services.aspx

2.65 We would also be interested in views on whether, and to what extent, the CONC requirements in this area should be aligned to those in other sourcebooks, in particular on mortgages (MCOB) and insurance (ICOBS).

2.66 Particular issues on which we would welcome views and evidence concern the nature and timing of disclosure of fees or commissions, and the timing of payment of fees. These are considered below.

Disclosure of fees/commissions

2.67 A number of our existing rules require disclosure of the existence and/or amount of a fee or commission in specified circumstances.

2.68 We would welcome views on whether these are appropriate and effective, or whether we should look to enhance or modify them. If so, we would be interested to hear views on how best this might be done, and what impact it might be expected to have both on consumers and on the firms themselves.

2.69 One element of this is the extent to which disclosure can be effective in ensuring that consumers are aware that they will be paying a fee, or that the broker may receive a commission (which may have an effect on its impartiality in promoting a particular product or lender), so that they can take this into account in deciding whether to deal with the broker and on what basis.

2.70 A related question is whether there is sufficient transparency regarding the nature of the services the broker is or may be providing, and for which a fee may be payable (or in respect of which a commission may be received from a lender or third party). For example, whether a fee is payable for an introduction to another credit broker rather than direct to a lender who may be able to offer a loan.

2.71 We would particularly welcome views on *what* information should be disclosed to consumers, and *when* and *how* it should be disclosed, and whether additional measures are needed to ensure that this assists consumers in making informed decisions.[18]

Timing of fee payments

2.72 A separate issue is whether, insofar as credit brokers are remunerated by fees from customers, there should be controls on the timing of such payments.

2.73 The PS14/18 rules require disclosure before a fee can be charged and before payment details can be taken for this purpose. However, the broker is not otherwise restricted as to when the fee is charged (although there are separate provisions regarding refunds).

2.74 We would welcome views on whether brokers should be precluded from charging a fee until the contracted service has been provided – either an introduction to a lender (or another credit broker) or advice or recommendation.

2.75 Alternatively, brokers could be precluded from charging a fee until a relevant credit agreement has been entered into. We recognise that this would necessitate a change to the relevant legislation, given that section 155 CCA expressly envisages that a fee may be charged following an introduction, subject to the right to a refund if no credit agreement is entered into within six months.

18 We will also have regard to the Supreme Court decision in *Plevin v Paragon Personal Finance Limited [2014] UKSC 61* in November 2014, which concerned non-disclosure of a commission in the context of the unfair relationships provisions in section 140A CCA.

2.76 We would welcome views on whether such limitations on when fees may be charged would be reasonable and appropriate, in the interests of protecting consumers, or whether they are seen as unnecessary and disproportionate. We would particularly welcome any information or evidence that stakeholders can provide supporting their views, together with any suggestions for alternative mechanisms in this area.

2.77 So far as such measures may create risks for consumers, or for competition and the market, we would welcome views on how these might be mitigated.

Next steps

2.78 In designing any possible future rules or guidance on broker remuneration, we will take into account the responses to this consultation, and any other views that stakeholders may have on the issues raised in this chapter.

2.79 If you would prefer to provide us with views, or information or evidence, separately from this consultation, please contact us at the address on page 2.

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

3. Lending issues

Introduction

3.1 This chapter sets out proposed changes to our rules for lending (other than in relation to financial promotions and debt issues, which are covered in subsequent chapters). It also includes a proposal in relation to credit reference agencies (CRAs).

Guarantor loans

3.2 A guarantor loan is where the borrower provides security in the form of a guarantor, typically a family member or friend. The guarantor undertakes to make payments under the credit agreement if the borrower does not pay. The guarantor may also indemnify the lender, by making good any losses the lender may suffer as a result of the borrower's failure to meet their obligations under the agreement.

3.3 The existence of this guarantee or indemnity may enable the borrower to access credit in circumstances where this would otherwise be precluded (for example, because the borrower has a poor credit record). It may also reduce the cost of the credit.

3.4 There are requirements in sections 105-113 of the CCA in respect of credit agreements involving security. In particular, the security instrument must be expressed in writing, and must comply with relevant regulations.[19] It must be signed by the surety (the person giving the security), who must be given a copy of the instrument together with a copy of the linked credit agreement. The surety must also be given statements and notices under the CCA, including a copy of any default notice (or notice of enforcement or termination) issued to the borrower.

3.5 The lender is required to assess the borrower's creditworthiness, and to give a pre-contractual explanation to the borrower. It is also required to treat the borrower with forbearance and due consideration if the borrower is in default or arrears difficulties. However, there are no equivalent protections in relation to guarantors.

3.6 We propose to build on the CONC provisions by providing that a guarantor is to be treated as a 'customer' by the lender for these and other purposes and in relation to certain high-level Principles for Businesses. Currently a guarantor is treated as a customer in relation to the regulated activities of debt collecting and debt administration, but not the lending activity.

3.7 Specifically, we propose the following changes:

- **CONC 4.2.22R** – to require the firm to provide an adequate pre-contractual explanation

19 The Consumer Credit (Guarantees and Indemnities) Regulations 1983, SI 1983/1556.

to the guarantor, covering the circumstances in which the guarantee or indemnity may be called on and the implications for the guarantor if it is. This is to enable the guarantor to make an informed decision on whether to act as guarantor in relation to the credit agreement. A corresponding requirement is proposed at CONC 4.3.8R in relation to peer-to-peer (P2P) agreements.

- **CONC 4.6.5R** – to require the firm to provide an adequate pre-contractual explanation to the guarantor before a continuous payment authority (CPA) is granted. The terms of the CPA must be in plain and intelligible language.

- **CONC 5.2.5R** – to require the firm to assess the potential for the guarantor's commitments in relation to the credit agreement to adversely affect the guarantor's financial situation. The firm must consider sufficient information to enable it to make a reasonable assessment. A corresponding requirement is proposed at CONC 5.5.7R in relation to P2P agreements.

- **CONC 6.2.1AR** – to require the firm to make a similar assessment before any significant increase in the amount of credit under the credit agreement.

- **CONC 6.7.25AR** – to extend to guarantors the requirements relating to amendments to the terms of a CPA.

- **CONC 7.1.4R** – to provide that a guarantor is to be treated as a customer for the purposes of CONC 7.3.4R (treating customers in default or arrears difficulties with forbearance and due consideration), and other CONC 7 rules on arrears, default and recovery, with the exception of provisions solely applicable to a borrower.

- **CONC 7.6.15AG** – to clarify that, where a guarantor has given a CPA in relation to a HCSTC agreement, the limit of two unsuccessful attempts on use of the CPA applies separately to the borrower and the guarantor.

- **PRIN** – to clarify that a guarantor is to be treated as a customer for the purposes of Principle 6 (treating customers fairly) and Principle 7 (communications).

3.8 It should be noted that none of the above overrides the existing obligations on firms in relation to the borrower. In particular, the lender must undertake a full and thorough assessment of the borrower's creditworthiness, including their ability to repay in a sustainable manner (in accordance with CONC 5.3), irrespective of whether there is a guarantor. CONC 5.3.4R makes clear that an assessment must not be based primarily or solely on the value of any security provided.

3.9 We would welcome views on the above proposals, and also on whether we should consider introducing additional requirements for guarantor lending, as part of a subsequent consultation paper. For example, to stipulate when it may be reasonable to seek payment from a guarantor, if the borrower does not make payment, and the steps that a lender should take before calling on the guarantee or indemnity.

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

Joint borrowers

3.10 A credit agreement may be made with two or more borrowers, acting jointly.

3.11 There are relevant provisions in section 185 CCA in relation to joint borrowers, but these apply solely in respect of requirements under the CCA. We propose to add similar provisions in relation to relevant CONC requirements.

3.12 Specifically, we propose the following changes:

- **CONC 4.2.7AG** – to provide that where there are joint borrowers, the firm should consider whether it may be appropriate to give separate pre-contract explanations to each borrower (rather than a single explanation to all of them). In doing so, the firm should consider the factors listed in CONC 4.2.7G (see below) in relation to each borrower.

- **CONC 5.2.4G(3B)** – to provide that where there are joint borrowers, the firm should consider whether it may be appropriate to have regard to the financial position of each borrower separately (as well as collectively) and the risk to each borrower from the credit being sought.

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

Credit reference agencies

3.13 **CONC 9** includes rules carried across from regulations made in 1977 on the conduct of business of CRAs, including in relation to the correction of entries in CRA files.[20]

3.14 The regulations required CRAs, following removal or amendment of an entry in an individual's CRA file, or receipt of a notice of correction from the individual, to notify any person to whom the CRA furnished information relevant to the financial standing of that individual within the previous six months. This was reduced to one month as part of transposition to an FCA rule.[21]

3.15 On reflection, and following discussions with the main CRAs and the Information Commissioner's Office, we are satisfied that the requirement no longer serves any useful purpose and should be removed.

3.16 It is unlikely that a lender in receipt of such information would contact the individual and offer them credit for which they were previously turned down. It is more likely that the individual will re-apply for credit, in which case the lender is likely to carry out a fresh CRA check and this will be based on the new data.

3.17 There are no equivalent requirements in the Data Protection Act – data controllers are not required to notify previous recipients of incorrect data unless so ordered by a court.

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

20 The Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, SI 1977/330.

21 See annex 5 of PS14/3.

Other proposals

3.18 In addition, we propose some other changes to the rules and guidance for lenders:

- **CONC 4.2.7G** – to clarify that, in deciding on the level and extent of the pre-contractual adequate explanation, relevant factors may include the duration of the credit (as well as the amount), the purpose of the credit (where known to the firm) and the borrower's degree of sophistication in credit matters.

- **CONC 4.6.3R** – to specify that the terms of a CPA in a credit agreement must be in plain and intelligible language, subsuming CONC 4.6.4R.

- **CONC 5.2.4G(2)** – to clarify that, in deciding on what is appropriate and proportionate in relation to an assessment of creditworthiness (including affordability), relevant factors may include the actual and potential cost of the credit (including any default charges) relative to the amount borrowed.

- **CONC 5.2.4G(3A)** – to clarify that, where a customer (such as a sole trader or partnership) is borrowing for business purposes, it may be reasonable for the lender in assessing creditworthiness to have regard to the customer's business plan, but the assessment should not be based solely on this.

- **CONC 13.1.6G** – to clarify that lenders are expected to make clear in any request for payment, or any communication relating to payment (but not necessarily every communication), in cases where the firm has failed to comply with sections 77-79 of the CCA, that the debt is unenforceable (although it remains outstanding).

- **CONC App 1.2.3R** – to clarify that the total charge for credit must not include any discount, benefit or reward (such as 'cash back') available to the borrower. This is because it is limited to the costs of the credit.

- **COND** – to amend the Threshold Conditions sourcebook to reflect changes to the scope of the limited permission regime, in relation to credit brokers involved in 'domestic premises supply' or the broking of consumer hire or hire-purchase agreements. This is on the assumption that the relevant statutory instrument (SI) laid recently in Parliament will be approved by each House and made.[22]

- **PERG** – to reflect the various legislative changes made or proposed since February 2014. These include exemptions relating to special purpose vehicles and charities, and exemptions from the financial promotion rules for local authorities and insolvency practitioners in specified circumstances. They also include proposed changes to the exclusions for solicitors and other legal professionals, and the exemptions for instalment credit and employee loans, and a new exemption for process serving.[23]

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

22 The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015.

23 The Financial Services and Markets Act 2000 (Miscellaneous Provisions) (No. 2) Order 2015.

4. Financial promotions

Introduction

4.1 This chapter sets out proposed changes to our rules and guidance on financial promotions and communications. These are applicable to consumer credit firms generally, including credit brokers and lenders.

HCSTC risk warning

4.2 When we introduced in **CONC 3.4.1R** the requirement for financial promotions for HCSTC to include a risk warning, we allowed an exemption where – owing to space constraints – it is not reasonably practicable to include one.

4.3 On reflection, we consider that the circumstances where it might be impracticable to include the risk warning in a financial promotion are extremely limited. In addition, it would be open to the firm to advertise in a way that does not trigger the requirement, for example by taking advantage of the 'image advertising' exclusion in CONC 3.1.7R. There is no equivalent to the HCSTC risk warning exemption in other FCA sourcebooks, for example for mortgages.

4.4 We have seen evidence of firms including or adding so much marketing information that this does not leave enough space for the risk warning. In some cases, we consider that this amounts to abuse of the exemption; at the least, it defeats the consumer protection purpose of the risk warning requirement.

4.5 We propose therefore to remove the exemption.

4.6 This approach is consistent with our proposed Social Media and Customer Communications guidance.[24] This sets out a media-neutral approach to the application of our financial promotion rules, and gives examples of how firms can comply.

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

Clear, fair and not misleading

4.7 Principle 7 of our high-level Principles for Businesses requires firms to pay due regard to the information needs of their clients and to communicate information in a way which is clear, fair and not misleading. This is reinforced by CONC 3.3.1R.

24 www.fca.org.uk/your-fca/documents/guidance-consultations/gc14-1

4.8 **CONC 3.3.5G** provides guidance on the 'clear, fair and not misleading' rule. We propose to elevate this guidance to a rule, to clarify our expectations. This is consistent with the approach proposed for mortgages.[25]

4.9 In particular, the proposed rule confirms that financial promotions and communications must be balanced, and must not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks. It must also not omit any important information, statements or warnings.

4.10 In addition, the proposed rule incorporates reference to comparisons and contrasts, currently in CONC 3.3.8G, with the latter being amended to make clear that a comparison or contrast may be with another person, or with another product or service, whether offered by the firm or by the other person.

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

Prominence

4.11 The existing rules include provisions around relative prominence.

4.12 In particular, where a representative example is required under CONC 3.5.3R, the information in the example must be presented together, with equal prominence, and must be more prominent than any other information about the cost of the credit and any indication or incentive requiring inclusion of the representative APR (the 'trigger information'). Similarly, where a representative APR is required under CONC 3.5.7R, it must be more prominent than the trigger information.

4.13 The representative example provisions derive from the CCD, which requires that the information be 'clear, concise and prominent'. On reflection, we consider that it may be difficult to comply with the requirement for information to be of *greater* prominence in certain media such as radio. The European Commission's May 2014 review of CCD implementation suggests that it is sufficient that specified information is *no less prominent* than other relevant information.[26]

4.14 We propose to adopt that approach in the CONC financial promotion rules, and in addition to clarify what we mean by 'prominence' (here and elsewhere in CONC).

4.15 Specifically, we propose the following changes:

- **CONC 3.2.3G** – to clarify that information or a statement in a financial promotion or communication will not be treated as prominent unless it is presented, in relation to other content, in such a way that it is likely that the average customer's attention will be drawn to it. Equivalent provisions are proposed at CONC 4.1.6G (content of quotations) and CONC 4.3.7G (pre-contractual explanations).

- **CONC 3.5.5R** – to provide that information in the representative example must be specified in a clear, concise and prominent way, and must be no less prominent than any other information relating to the cost of the credit and any indication or incentive triggering the representative APR.

25 CP14/20, draft MCOB 3A.3.1R.

26 http://ec.europa.eu/consumers/financial_services/consumer_credit_directive/index_en.htm

- **CONC 3.5.7R(2)** – to provide that the representative APR must be no less prominent than any information triggering it.

- **CONC 3.5.10R** – to specify that a financial promotion must include a clear, concise and prominent statement of any obligation to enter into an ancillary service contract (but removing the existing requirement for this to be no less prominent than the representative example).

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

Representative APR

4.16 **CONC 3.5.7R** requires a financial promotion to include a representative APR if it indicates that credit is available to persons who may consider their access to credit restricted, or that any of the terms on which credit is available, or the way in which it is offered, is more favourable than in other cases or by other lenders. The representative APR must also be included if the promotion includes an incentive to apply for credit or to enter into a credit agreement.

4.17 We propose to clarify the wording of these provisions, so that there is greater certainty about their application. Specifically, we propose that a representative APR should be included if the financial promotion:

- states or implies that credit is available to individuals who might otherwise consider their access to credit restricted (the sub-prime trigger)

- includes a comparison, whether express or implied, with another person, product or service (the comparative trigger), or

- includes an incentive to apply for credit or to enter into an agreement under which credit is provided (the incentive trigger)

4.18 Accompanying guidance at CONC 3.5.8G will provide that:

- A firm's trading name, website address or logo may trigger the requirements

- A comparison includes a reference (whether stated or implied) to the terms on which, or the way in which, credit is offered or made available, or the nature or quality of the service offered or provided. This is irrespective of whether the other person, product or service is specified in the financial promotion

- A comparison is not necessarily implied where the financial promotion merely refers to a person, product or service in a factual manner, unless it can reasonably be inferred in the particular case that a comparison is being made

- A statement about the speed or ease of processing, considering or granting an application for credit, or of entering into a credit agreement or making funds available, may constitute an incentive, depending on the context of the statement and the circumstances in which it is made. Such a statement will be an incentive where it is likely to persuade or influence a customer to take the relevant steps, or if it is presented in a way which is likely to have that effect

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

Other proposals

4.19 In addition, we propose some other changes as follows:

- **CONC 2.2.4G** – to clarify that 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 its business.
- **CONC 3.1.4AG** – to remind firms providing debt counselling or debt adjusting services that they are also subject to CONC 3.9 (with cross-reference also from CONC 3.9.4AG to CONC 3.3.10G and 8.2.4R).
- **CONC 3.1.7R** – to clarify that the 'image advertising' exclusion permits inclusion of the firm's trading name as well as its legal name.
- **CONC 3.3.2R** – to clarify that a financial promotion relating to credit broking must specify the name of the lender where it is known.
- **CONC 3.3.3R** – to simplify the wording, in line with other provisions in CONC 3. An equivalent change is proposed at CONC 3.8.2R.
- **CONC 3.3.4G** – to clarify that a firm may breach CONC 3.3.3R if it states or implies that credit is guaranteed or pre-approved, or is not subject to any credit checks or other assessment of creditworthiness or affordability. This replaces the existing provision in 3.3.4G(2) and subsumes the requirement at 3.5.12R(1)(d).
- **CONC 3.5.3R** – to clarify that a representative example is triggered if the financial promotion 'indicates' (rather than 'includes') a rate of interest or an amount relating to the cost of credit – this ensures consistency with the terminology used in the CCD.
- **CONC 3.5.4G** – to clarify that reference to 'interest-free credit' triggers the representative example, as it indicates a rate of interest, being 0%. In other words, both figures and words can indicate a zero rate of interest. We also propose to move CONC 3.5.6G(3) into this guidance so that it is clear that it applies to all rates of interest and charges stated in the financial promotion, and not merely those forming part of the representative example.
- **CONC 3.5.6G** – to cross-refer to the Glossary definition of 'representative APR', and to provide an illustration of circumstances in which an example is unlikely to be 'representative'. It also clarifies the meaning of 'cash price' (also a Glossary term).
- **CONC 3.6.5R** – to clarify the scope of the requirement to include a risk warning in financial promotions for credit agreements secured on land where the property is used as a dwelling (irrespective of whether it is the customer's primary residence).
- **CONC 3.6.10R** – to amend the sub-heading to clarify that the various information listed must be included only where triggered by CONC 3.6.4R.

- **CONC 3.9.5R** – to clarify that a claim (that the firm is or represents a charitable or not-for-profit or governmental organisation) may be express or implied.
- **CONC 3.10.3G** – to remind firms of the CCA ban on canvassing off trade premises for certain credit agreements and ancillary credit services.

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

5.
Debt issues

Introduction

5.1 This chapter sets out proposed changes to our rules and guidance on debt issues, including the handling of arrears and default, and debt advice.

5.2 These proposals will affect, variously, lenders and owners, debt collectors, operators of electronic platforms in relation to lending (in relation to a borrower under a P2P agreement) and firms carrying out debt counselling or debt adjusting. The specific kinds of firms affected by each proposal are detailed in each section.

Referrals to debt advice

5.3 CONC includes guidance which states that, where appropriate, firms should refer customers in default or in arrears difficulties to sources of free and independent debt advice.

5.4 This guidance has been the subject of some discussion, and arguably does not accurately reflect the policy intention, that customers in default or arrears difficulty should be informed that free and impartial debt advice is available from not-for-profit (NFP) debt advice bodies and should be given relevant contact details.

5.5 We propose to amend **CONC 7.3.7G** to reflect this, and to add that firms may also refer customers to other appropriately regulated sources of debt advice. This has always been the intention, as explained in a frequently asked question (FAQ)[27] on our website, but is not currently articulated in the guidance.

5.6 This proposal will affect firms carrying out consumer credit lending, consumer hiring, operating an electronic system in relation to lending (in relation to a borrower under a P2P agreement) or debt collecting.

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

27 http://fca.org.uk/firms/firm-types/consumer-credit/faqs?category=debt-advice

Exercise of continuous payment authority

5.7 If a customer has fallen into arrears they may wish to arrange a repayment plan with their creditor, or with a debt collector acting on the creditor's behalf. These repayments may be taken by a variety of payment methods but are likely typically to be via a direct debit or CPA.

5.8 While CPA has been misused in the past by some firms, particularly in the HCSTC market, the payment method can be in a customer's interests given that a failed payment request does not result in bank charges, whereas this is likely to be the case with a failed direct debit.

5.9 However, the effect of our rules is that, if the original credit agreement does not provide for the use of CPA and set out its terms of use, firms can only introduce it as a payment mechanism by using a modifying agreement under section 82 CCA.

5.10 This carries risks for the firm, as if it gets things wrong this can make the credit agreement unenforceable. In addition, it can be burdensome for the firm as the modified agreement is treated as a new credit agreement for CCA purposes, and there are associated requirements including in relation to pre-contract information and explanations, creditworthiness assessment, signature and copy documents. The need for these may also be confusing for consumers.

5.11 We understand that firms view compliance with section 82 as unduly burdensome in cases where the firm wishes to exercise forbearance, and this may lead firms to decline customers' offers to make payments by CPA under a repayment plan. This may put the customer at risk of harm as a result of the application of bank charges.

5.12 Given our understanding that a significant number of consumers are currently making payments on agreed repayment plans by CPA, pending the outcome of this consultation, we would not expect to take supervisory or enforcement action against firms that use CPA as a repayment mechanism in circumstances where the firm is exercising forbearance in relation to a customer in arrears or default simply because it is not incorporated as a contract term. This is provided the firm's conduct is fair, transparent and consistent with their other regulatory obligations, including the firm making the relevant information disclosures to the customer (including regarding the customer's right to cancel) and obtaining the customer's informed consent to the use of CPA.

5.13 We propose to allow lenders (and debt collectors acting under an arrangement with the lender) to introduce CPA without a modifying agreement in certain circumstances and subject to conditions, as set out in **CONC 7.6.2AR**.

5.14 Before the customer agrees to a CPA, the firm would have to:

- explain to the customer why a CPA is proposed
- provide the customer with an adequate explanation of the matters in CONC 4.6.2R
- give the customer information in a durable medium setting out, in plain and intelligible language, the terms of the CPA and how it will operate, and
- give the customer a reasonable opportunity to consider the explanation and information they have been given before coming to a decision

5.15 We propose that firms will **only** be able to introduce CPA by this mechanism where the customer is in arrears or default and the firm is exercising forbearance. Existing rules and guidance in CONC 7.6 regarding the proportionate and reasonable use of CPA will continue to

apply, including the requirement to exercise appropriate forbearance where the firm has reason to believe the customer may be in financial difficulties.

5.16 This proposal will apply to firms carrying out consumer credit lending, operating an electronic system in relation to lending (in relation to a borrower under a P2P agreement) or debt collecting.

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

Duration of debt management plans

5.17 Used in appropriate circumstances, debt management plans can be an effective means by which an individual with debts can sustainably repay the money they owe to their creditors.

5.18 A typical approach adopted by debt management plan providers in setting up such plans is to negotiate with creditors to accept sustainable monthly repayments over an agreed term. This can result in debt management plans which – if adhered to for the entire term – potentially take a number of years to fully pay off the individual's debts.

5.19 In practice, many people's finances improve during the period of the debt management plan and they are able to either repay their debts in a lump sum or increase the level of their periodic payments to pay off their debt more quickly.

5.20 Because of the prospect of an improving financial situation, some creditors will accept a debt management plan which initially sees them receive only token repayments.

5.21 However, we are concerned that some debt management plan providers recommend and arrange long-term plans where there is no realistic prospect of an improved financial situation and where another debt solution, for example bankruptcy or a debt relief order, may be in the consumer's best interests.

5.22 If the plan provider is a fee-charging debt management firm, an individual could be in a debt management plan for many years, incurring the cost of paying fees and charges to the firm with no real prospect of paying off their debts.

5.23 We propose to add guidance at **CONC 8.2.2G** to clarify that firms should take into account the expected term of the proposed debt management plan, having regard to the Principles for Businesses.

5.24 This proposal may affect firms that carry out debt counselling and debt adjusting. It would apply to both profit-seeking debt management firms and NFP debt advice bodies.

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

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

5.25 Our Handbook includes rules setting out what firms must do when a customer has a right to refer a complaint to the Financial Ombudsman Service (the ombudsman service), including promoting awareness of their right to complain in the first place.

5.26 These rules require firms to refer customers in writing to the availability of information regarding complaints procedures at the point of sale or, if there is no point of sale, as soon as possible when contact is first made with the customer.

5.27 In practice this means that NFP debt advice bodies are required to provide information in writing about the availability of complaints information at the first point of contact when they give debt advice.

5.28 This creates an additional burden for these firms when providing debt advice in general but in particular when it is provided over the telephone as it would likely involve sending the information by post. There is a risk that this additional burden could reduce the capacity of the sector to provide debt advice.

5.29 Throughout the transfer of regulation of consumer credit, we have sought to minimise additional costs for NFP debt advice bodies. On the other hand, customers of NFP debt advice bodies with an OFT group licence were not able to take their complaint to the ombudsman service before 1 April 2014, so the application of this rule represents a new right for their customers, awareness of which should be promoted.

5.30 We propose therefore to amend our **DISP** rules to state that NFP debt advice bodies may meet their obligation by making an oral reference to the availability of complaints information if they do not communicate with the customer in writing at that point, but must refer to the availability of complaints information on the first occasion they communicate with the customer in writing.

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?

Other proposals

5.31 We also propose a number of minor amendments to other debt-related rules:

- **CONC 7.13.3R** – to italicise the word 'person' so as to refer to the Glossary definition of that term.
- **CONC 7.17.5R and 7.18.3R** – to amend the heading of the Arrears Information Sheets which must accompany notices of sums of arrears relating to peer-to-peer (P2P) agreements to clearly reflect that they relate to P2P lending.
- **CONC 8.3.4AR** – to amend our 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. We would however expect firms to consider whether it may be appropriate to provide advice in a durable medium in the particular case, for example where complex advice is given.

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

6.
The Mortgage Credit Directive

Introduction

6.1 This chapter sets out our proposals for amendments required to CONC and MCOB as a consequence of the implementation of the Mortgage Credit Directive (MCD).

6.2 This includes:

- proposals to amend CONC in relation to second charge mortgages, which will be regulated as part of the first charge mortgage regime from 2016
- proposals to amend MCOB in relation to a small subset of lending that is not secured on residential property but is used to acquire or retain property rights in residential property

MCD and second charge mortgages

6.3 Second charge mortgages are currently regulated as consumer credit. The government has decided to move the regulation of second charge mortgages into our first charge mortgage regime from 21 March 2016 as part of the implementation of the MCD. We consulted on proposed rules for second charge mortgages in September 2014.[28] We are using this consultation to consult on the consequential changes to CONC that result from moving second charge lending into the MCOB regime.

6.4 This move will mean that virtually all agreements secured on land will be taken out of CONC. However, CONC will continue to apply to a limited number of agreements secured on land – for example, a small volume of 'legacy' mortgages entered into before 31 October 2004, and loans secured on land other than the customer's own residential property. Examples of such agreements are set out in the proposed guidance at CONC 1.2.7G. Accordingly, provisions in CONC that refer to secured lending or broking will (with a few exceptions) be retained.

Q19: Do you have any comments on the proposed changes to CONC resulting from the transfer of the second charge regime?

28 www.fca.org.uk/news/cp14-20-mcd

MCD lending not secured on the home

6.5 In our September consultation paper (CP14/20) we outlined our high-level approach to applying the MCD to a small subset of lending that is not secured on residential property, but which is used to acquire or retain property rights in residential property. These loans, described in Article 3(1)(b) of the MCD, may be unsecured, or secured on land other than the customer's residential property or on other assets.

6.6 Examples of this type of activity could include where a farmer secures a loan on agricultural machinery or buildings in order to purchase the family home, or where an unsecured loan is taken out to acquire rights in property.

6.7 Our proposed approach in September 2014 was to create a new chapter within MCOB (MCOB 14) detailing the requirements that will apply to this activity, which are largely derived from the MCD together with additional conduct protections from the existing mortgage and consumer credit regimes. We also proposed to allow firms the discretion to elect to comply with either MCOB or CONC protections in some cases in order to allow greater flexibility for firms and minimise regulatory burdens.

6.8 HM Treasury has decided that these loans are to be excluded from the scope of 'regulated credit agreements' in the Consumer Credit Act 1974 (CCA). As such, the CCA will no longer apply to such loans. To ensure that consumers are not adversely affected by the loss of CCA protections in this area, we propose to apply two additional protections from MCOB which were not included in our proposed MCOB 14 in September 2014. Because these protections are broadly aligned with current requirements under CCA/CONC we do not anticipate any significant additional burdens on firms involved in this lending.

6.9 We propose to apply MCOB 7.5 (statements) to Article 3(1)(b) activity. This will ensure that customers receive an annual statement covering details of the agreement such as the date and amount of any payments made, the rate of interest applicable during the statement period, and any other amounts charged including fees. Any firms currently carrying out this lending have to issue a similar statement under section 77A CCA.

6.10 We also propose to apply most of the provisions in MCOB 13 on the treatment of customers in the event of arrears, payment shortfalls and repossessions. Article 3(1)(b) activity is currently subject to the equivalent chapter at CONC 7, plus a range of additional protections under the CCA, including the requirement to issue arrears and enforcement notices to consumers. Because much of MCOB 13 implements the requirements of the MCD, and because the loss of CCA protections will otherwise hinder both the functionality and the level of consumer protection afforded by the existing CONC regime, we consider it appropriate to apply MCOB 13 in its entirety, with the exception of MCOB 13.3.9R.

6.11 We have conducted an assessment of the likely impact of applying these areas of MCOB on firms and we consider this to be trivial given the similarity of the current requirements under CONC/CCA. Accordingly, we have not conducted a CBA specifically about these provisions.[29]

6.12 We do not propose to apply MCOB 13.3.9R, which places record-keeping requirements on firms including the recording of all telephone conversations with customers in arrears. This is not currently required of consumer credit firms, and introducing such a measure may lead to

29 Section 138L(3)-(4) FSMA provides that the FCA need not conduct a CBA if it considers that there will be no increase in costs or any increase will be of minimal significance.

a substantial increase in costs to firms for what might be a small subset of their business. This may in turn lead them to stop offering these types of loans.

6.13 We are also proposing to make some alterations to the provisions listed in the proposed MCOB 14 including to those CONC provisions that are applicable to Article 3(1)(b) lending and broking.

6.14 As a result of these changes and our proposals to apply additional MCOB protections, many of the areas where we proposed to allow firms to choose to comply with either set of similar MCOB and CONC provisions have fallen away, with the effect of leaving only those rules relating to financial promotions (CONC 3 and MCOB 3A respectively). We will allow firms the discretion to elect to comply with either set of protections in this area in order to provide flexibility and to accommodate existing business. A firm should generally make one election in relation to an entire Article 3(1)(b) loan book, but if it seeks to approach different elements of a book in different ways, it may do so provided that it maintains adequate records to ensure that the rules applicable to each type of activity and each agreement or customer are clearly identifiable.

6.15 We have also added a rule in MCOB 14 stating that a firm must comply with MCOB 14 only where it knows or has reasonable cause to suspect that a loan will be used for the purposes described in Article 3(1)(b).[30] We would welcome any views from stakeholders on this.

6.16 The proposed MCOB 14 also clarifies the position of high net worth individuals in relation to Article 3(1)(b) credit agreements. Such individuals will continue to be able to waive the protections applicable to regulated credit agreements, with the exception of those which transpose or implement the MCD.

Q20: Do you agree with our approach to implementing the MCD for lending not secured on the home?

Additional changes resulting from the MCD

6.17 In the November fees consultation paper,[31] we consulted on an amendment to the definition of 'credit-related regulated activity' in our FEES sourcebook to include the new activity of advising on Article 3(1)(b) credit agreements.

6.18 We are proposing to further clarify PERG 4.4.1AG on the 'provision of credit' to address the potential for contingent liabilities to amount to a financial accommodation.

6.19 Please see Appendix 2 for our revised MCOB 14 and the consequential amendments we are proposing to CONC as a result of moving second charge business out of CONC.

Q21: Do you agree with the additional MCD changes proposed?

30 As expalined in paragraph 6.5.

31 www.fca.org.uk/your-fca/documents/consultation-papers/cp14-26

7. Next steps

What do you need to do?

7.1 Please send us your comments on our proposals, and on the more general issues discussed on credit broking, by **Wednesday 6 May**. We will review all your responses and publish our feedback, policy decisions and final rules and guidance in the summer.

FCA consumer credit policy consultation

7.2 Our consumer credit regime is relatively new and firms are still adapting to it. We are still learning more about how the market operates and the types and extent of consumer harm. 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.

7.3 These may be to reflect government or other public sector initiatives, address aspects of consumer harm identified during our supervisory work, or further clarify our existing requirements, for example in response to comments from stakeholders or issues raised during the authorisation process.

7.4 We are conscious, however, of the challenges frequent changes pose for firms, which are also adjusting to the new regime and our supervisory approach as well as applying for authorisation. We will, as far as possible, focus on priority areas and indicate in advance the main issues we plan to cover, and seek input from stakeholders as we develop our proposals.

7.5 We plan to publish a further consultation paper later this year, which is likely to cover the following areas:

- implementing recommendations to the FCA in relation to HCSTC stemming from the CMA's payday lending investigation[32]
- improving our responsible lending standards for consumer credit to promote their effectiveness in delivering adequate assessments of creditworthiness (including affordability)
- whether we should introduce new rules or guidance on repeat borrowing in the HCSTC market, as we indicated in the price cap policy statement[33] that we would consider
- whether we should ban or restrict cold-calling or other forms of direct marketing, in particular in relation to HCSTC and debt management services

32 www.cma.gov.uk/cma-cases/payday-lending-market-investigation
33 www.fca.org.uk/your-fca/documents/policy-statements/ps14-16

- promoting and facilitating the use of quotation searches across all credit sectors, and
- any further proposals on credit broking that come out of the responses to this consultation

7.6 Please contact us (at the address on page 2) if you have a particular interest in any of these topics and would like to share your views with us as we work on our consultation proposals.

Other forthcoming publications

7.7 We will also be publishing reports on the findings of two thematic reviews done by our supervisors on:

- the treatment of HCSTC borrowers who are in arrears or default, and
- the quality of debt management advice

Applying for authorisation

7.8 All former OFT-regulated firms that currently have interim permissions to carry on credit-related regulated activities have been told when they must apply for FCA authorisation (between 1 October 2014 and 31 March 2016). Firms are being contacted before the start of their application period and sent a Credit Ready pack, containing a guide to the regime, and a 'jargon buster'.

7.9 Full information on our authorisation process, including the application periods timetable, is set out on our website.[34]

34 www.fca.org.uk/firms/firm-types/consumer-credit/authorisation/when-to-apply

Annex 1
List of questions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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?

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

Q19: Do you have any comments on the proposed changes to CONC resulting from the transfer of the second charge regime?

Q20: Do you agree with our approach to implementing the MCD for lending not secured on the home?

Q21: Do you agree with the additional MCD changes proposed?

Q22: Do you have any comments on the cost benefit analysis?

Q23: Do you agree with our initial assessment of the impacts of our proposals on the protected groups? Are there any potential impacts we should consider?

Annex 2
Cost benefit analysis

1. This Annex sets out our cost benefit analysis (CBA) for the proposals in this consultation paper that require one, and explains why we do not consider the other proposals to need a CBA.

2. Section 138I FSMA requires us to publish a CBA unless, in accordance with section 138L, we believe there will be no increase in costs or that the increase will be of minimal significance. Section 138I also requires us to publish an estimate of costs and benefits unless they cannot be reasonably estimated or it is not reasonably practicable to produce an estimate.

Credit broking

3. We are proposing an amendment to CONC 6.8.4R to require that, where section 155 CCA applies, responding promptly to a request for a refund includes paying the refund promptly, where a refund is payable.

4. This proposal incorporates into CONC paragraph 6.17 of the OFT credit broking guidance, which stated: "We would consider it to be an unfair practice if a broker did not respond to requests for refunds, in a timely manner or at all, where section 155 of the Act applies, or not to make refunds, where appropriate, promptly, after receiving such a request".

5. We are not required to carry out a CBA where our draft rules would have the same effect as, or substantially the same effect as, any provisions of guidance issued under the CCA.[35] As this proposal has the same effect as a provision of the OFT credit broking guidance we have therefore not carried out a CBA.

6. We are also proposing a change to SUP 16.12 in relation to the reporting requirements placed on firms carrying out credit broking by the rules we made in December 2014. This change is likely to lead to lower compliance costs for firms that have been fully authorised, as they would be required to report data on their web domain names using the FCA's GABRIEL system rather than by email, fax or postal return, or by hand as at present. It presents no change for firms with interim permission. As this proposal will not lead to additional costs for firms no CBA is required.

35 Article 61, Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, SI2013/1881.

Guarantor lending

7. Chapter 3 makes various proposals in relation to guarantors. Because guarantors will most often be family or friends of borrowers, the relationship they have with the borrower may mean that emotion plays a part in their decisions to act as guarantors, potentially to the extent that emotional considerations outweigh purely rational considerations. If guarantors do not receive sufficient, clear information from lenders about the nature of the risk that they face acting as guarantors, they may be more likely to sign up for this role than if fully informed, and as a consequence may suffer harm.

8. To address these risks, we propose various changes in Chapter 3 of this consultation paper. In particular:

- firms to carry out creditworthiness assessments of guarantors
- firms to provide adequate explanations to guarantors
- apply CONC 7 to guarantors, which imposes requirements in relation to arrears, default and recovery, for example the requirement to treat customers in default or arrears difficulties with forbearance and due consideration, and
- apply Principles 6 and 7 to guarantors

9. In this paper, and in the draft rules instrument at Appendix 1, we use the term 'guarantor' to mean a person other than the borrower or hirer who has given, or is to give, a guarantee or an indemnity (or both) in relation to a regulated credit agreement, a regulated consumer hire agreement or a P2P agreement. In this context, a guarantee does not include a charge, a legal or equitable mortgage, or a pledge.

Information base

10. To understand the likely impact of the proposals on creditworthiness assessments, explanations and CONC 7 (forbearance etc) we surveyed 18 firms and received nine responses. In addition, we obtained information from a firm that was engaging with our Supervision department on an unrelated matter. These ten guarantor loan providers originated loans totalling £154m to 53,000 customers in 2013, an estimated 80% to 90% of the market in terms of the volume of lending secured by a guarantee.

11. We consider the coverage of the information gathered to be robust. However, as with all surveys, it is possible that there may be biases in responses. In this case, as firms were not responding to the FCA anonymously, responses may have been biased by the desire to signal to the regulator that they were treating guarantors well. However, we have no other credible information base on which to assess the likely impacts of our proposals. While we acknowledge that the possible bias in responses may underestimate the materiality of actual impacts, attempting to account for this in a quantitative manner is not reasonably practicable.

Creditworthiness assessments of guarantors

12. Because firms might think of guarantors as a form of collateral, lenders are likely to have strong incentives to conduct good credit risk assessments of guarantors. However, it is possible that the incentive to assess the affordability of guarantors, in effect a higher test, is less strong. If our requirement to conduct affordability assessments of guarantors to an appropriate standard led to a change in the incidence and quality of such assessments, we might expect the following impacts:

- For individuals who no longer act as guarantors: benefits from avoiding the negative impacts associated with payment problems, due to some borrowers being refused or given smaller loans.

- For individuals who no longer get (or get smaller) guarantor loans: welfare losses from reduced or delayed consumption, due to some borrowers being refused or given smaller loans.

- For firms: impacts on revenue and profitability as a consequence of reduced volumes of lending and compliance costs associated with carrying out more stringent affordability assessments.

13. Any impact would require the incidence and/or standard of affordability assessments to increase. Here, all respondents in our sample indicated that they were already carrying out such assessments, suggesting that the proposal would not have a significant impact. On that basis, we consider that the proposal is not likely to result in costs of more than minimal significance and have therefore not attempted to produce estimates of impacts.[36]

Providing adequate explanations to guarantors

14. The incentives for firms to provide adequate information to guarantors may not be as strong as the incentive to assess the credit risk of guarantors. Were our proposal to lead to a material change in the substance and clarity of information provided, the most material impact that might occur would be driven by some individuals no longer willing to act as guarantors. In theory the main consequence for different groups may be as follows:

- For individuals who no longer act as guarantors: eliminating the harm that might otherwise have occurred had they acted as guarantors and had the borrower fallen into payment difficulties.

- For firms: a loss in revenue and profits from the reduction in the volume of lending.

- For individuals who no longer get guarantor loans: the impact would depend on the balance between the welfare loss from delayed consumption against the welfare gain from avoiding potential payment difficulties.

15. All firms that responded to our survey stated that they already provide adequate explanations to guarantors and that our proposals in this area would have no impact. On that basis, we consider that the proposal is unlikely to result in costs of more than minimal significance and have therefore not produced an estimate of costs and benefits. While there may be some bias in responses, and we cannot be certain that the level of explanation meets that which would be required by the proposed rule, we cannot quantify potential compliance or other impacts given the views expressed.

Applying CONC 7 to guarantors

16. CONC 7 protections apply to borrowers in default or arrears difficulties, but currently only apply to guarantors in a similar position if the debt is passed on to a third party debt collector. This is because of the way that 'customer' is defined in the Glossary.

36 One alternative, if we assumed the degree of bias in the responses to be very high, would be to discount the survey responses entirely. However, were we to do so, we consider it would not be reasonably practicable to produce an estimate of the costs.

17. In theory, the direct impact of this proposal would be a benefit for guarantors through their greater protection (improved treatment) were borrowers to default and guarantors be unable to meet their obligations. This would imply some higher costs for firms.

18. All but one respondent reported that they already treat guarantors as if CONC 7 applies. The one firm which said it did not stated that complying with the proposed change would not lead to significant incremental impacts for them. We therefore consider that this proposal, to the extent that it might result in an increase in costs, would lead only to an increase of minimal significance and, in reliance on section 138L(3) of FSMA, have therefore not produced a CBA for this proposal.

Treating guarantors as customers for the purposes of Principles 6 and 7

19. Principles 6 and 7 currently only apply to guarantors in default or arrears if the debt is passed on to a third party debt collector (for the reason given in paragraph 16 above). In theory, applying these Principles to guarantors, in particular in the context of the new rules proposed above, will benefit guarantors through enhancing the regulatory requirements for how firms might have to treat such individuals. In practice, we are of the view that beyond the individual rule changes discussed above (and in particular the application of CONC 7 to guarantors) applying Principles 6 and 7 should not lead to significant costs for firms through requiring further changes in behaviour.

20. This does not mean that we consider the application of Principles 6 and 7 to be ineffective in light of the new rules: the Principles are a general statement of the fundamental obligations of firms under the regulatory system. Breach of a Principle renders a firm liable to disciplinary sanctions. These constitute useful protections for guarantors. But we consider that this proposal, to the extent that it might result in an increase in costs over and above those resulting from the other rules relating to guarantors (and without which we would not propose to apply Principles 6 and 7), would lead only to an increase of minimal significance. In reliance on section 138L(3) of FSMA, we have not produced a cost benefit analysis for this proposal.

Credit reference agencies

21. We are satisfied that these rules, which derive from 1977 regulations, no longer serve any useful purpose. Withdrawing the rules will not result in an increase of costs. We have therefore not produced a cost benefit analysis for this proposal.

Financial promotions

HCSTC risk warning

22. As described in Chapter 4, we propose to remove the exemption relating to the HCSTC risk warning in financial promotions on an electronic medium where space is limited.

23. The rule in CONC 3.4.1R requires firms to include the HCSTC warning unless it is not reasonably practicable to do so because of the limited space available on the medium in question. In our view, there are currently likely only to be very limited circumstances, if any, where a firm could rely on the exemption. As a consequence, we think removing the exemption is unlikely to incur significant costs for firms.

24. In developing this proposal beyond immediate impacts we considered in particular whether this would harm competition through raising barriers to entry for new entrants. This would be a situation where existing providers in the market might be able to rely on their brand presence to advertise using restricted electronic communication space without triggering the need for a risk warning. However, potential new entrants might have to describe their activities (not being able to rely on brand recognition alone) and could end up, for example, with their tweets or sponsored links dominated disproportionately by risk warnings.

25. We are satisfied that the financial promotion rules allow enough flexibility in communication to mean that any increase in barriers to entry imposed by removing the exemption is not likely to be significant. This proposal will, in our view, not result in an increase in costs; to the extent that it does, the increase will be of minimal significance. On this basis we have not produced a cost benefit analysis for this proposal.

Clear, fair and not misleading

26. We propose to restate the current guidance on clear, fair and not misleading in CONC 3.3.5G as a rule. This makes explicit a requirement on firms which already exists in that the guidance is our information and advice on Principle 7. We are, however, making some amendments to align the wording to that in other sourcebooks, including the rule proposed in CP14/20 in relation to mortgages, to ensure consistency for firms. We do not consider that this proposal will result in an increase in costs; to the extent that it does, we consider any increase will be of minimal significance. On that basis, we have not produced a cost benefit analysis for this proposal.

Prominence

27. In developing our proposals on prominence we sought to achieve greater consistency between CONC and other sourcebooks. However, our ability to make changes in relation to consumer credit is limited by the CCD and as such our proposals align the CONC provisions on prominence more closely with those in the CCD, and with the Commission's interpretation of these.[37] The proposed changes may lead to some reduction in costs (e.g. radio advertising costs) for firms, by increasing flexibility; but we do not think the changes will lead to increased costs for firms. We do not think the change would materially reduce the effectiveness of protections for consumers, and so lead to increased costs for consumers, because it should not significantly alter the prominence of representative examples. On that basis, we consider that the proposal is likely to result in costs of only minimal significance and have therefore not produced a CBA.

Representative APR

28. The proposed changes clarify the application of the requirement to include a representative APR in any financial promotion which states or implies that credit is available to individuals who might otherwise consider their access to credit restricted, includes a comparison (with another person, product or service), or includes an incentive. We are aware that the current rules (which derive from CCA regulations) can be difficult to interpret in some cases, which can have an adverse impact on how firms promote themselves, their products or services. Clarifying the rules should reduce regulatory burdens on firms, with no material diminution of consumer protection. We have not prepared a cost benefit analysis for this proposal because we do not consider it will result in an increase in costs; to the extent that it does, we consider any increase to be of minimal significance.

37 As set out in its May 2014 report on CCD implementation.

CPA as a debt recovery mechanism

29. Our proposal, detailed in Chapter 5, is to allow firms to introduce CPA as a debt repayment mechanism without necessarily using a modifying agreement under section 82 CCA, where the original credit agreement does not provide for the use of CPA. We are also proposing that debt collection firms should be able to use CPA as a debt repayment mechanism. In each case this will only be permitted where the customer is in default or arrears and the lender or owner is exercising forbearance.

30. CONC 4.6.2R requires that the credit agreement include the terms of a CPA and the provision of an adequate explanation to the customer of information such as when payments will be taken and how to cancel them. CONC 7.6.1R requires that a firm does not use CPA except in accordance with the terms specified in the credit agreement, although firms may agree with customers to change the terms subject to certain conditions. However, if a firm wishes to introduce CPA where the original credit agreement does not specify terms for its use, a modifying agreement is required. This requirement for a modifying agreement under section 82 CCA may discourage firms who wish to offer forbearance and lead to negative outcomes for consumers who wish to pay by CPA.

31. We have received strong representations from firms on this issue. We understand that firms continue to use or are putting CPAs in place, by agreement with customers, to recover repayments where this has been subsequently agreed with customers but where the original credit agreement did not allow for CPA.

32. For this reason, pending the outcome of this consultation, we would not expect to take supervisory or enforcement action against firms that use CPA as a repayment mechanism in circumstances where the firm is exercising forbearance in relation to a customer in arrears or default simply because it is not incorporated as a contract term. This is provided the firm's conduct is fair, transparent and consistent with their other regulatory obligations, including the firm making the relevant information disclosures to the customer (including regarding the customer's right to cancel) and obtaining the customer's informed consent to the use of CPA.

33. The proposed change is likely to save material costs (part of which would likely be passed on to customers) of otherwise changing over to alternative payment mechanisms and costs arising to consumers from lenders and debt collectors not being able to take payments flexibly.

34. The counterfactual for the assessment of impacts in our analysis is the position in which many firms are currently operating as if the rule were in place (see paragraphs 31 and 32), though some firms have reverted to compliance with CONC and section 82 CCA as they stand (consequently using alternative payment mechanisms instead of CPA).

Information base

35. To gather information on the likely impacts of our proposal we sent out a survey to 14 lenders and debt collectors that had communicated their concern or interest in this policy area, either directly to the FCA or to a trade body.

36. We received responses from two large debt collection firms. In total the value of the debt these firms are currently collecting on is around £11 billion and relates to almost 5 million loans. There is very limited statistical information publicy available on the debt collection sector. We assume, based on disparate information, that the entire market, relevant to financial services firms, may be three to four times the size of our sample.

37. We also received responses from two large lenders, which account for around 8% of the UK banking sector by balance sheet size. These two lenders are acting in a manner compliant with the current CONC rules, and do not use (or seek to put in place) CPA for collecting debt repayments where a CPA was not included in the original credit agreement, both in-house and where debt collection is outsourced. Based on the size of these firms and additional information gained by our Supervision department we estimate that perhaps 10% to 20% of firms act in this manner currently.

Potential transfer and related impacts

38. Given the flexibility CPA allows in accessing debtors' accounts (subject to regulatory requirements in our Handbook), the proposal may lead to higher recovery rates. This would be a transfer (from an economic analysis perspective) from borrowers in debt to firms. Beyond the transfer, given the financial difficulties that borrowers in this situation will be in there may be an overall welfare loss, given the likely greater utility of money to stretched borrowers compared to firms. A counteracting impact may be better outcomes for customers following debt repayment in terms of future ability to access loans.

39. Only one of the firms that responded was able to provide information on differences in recovery rates having moved from CPA to alternative mechanisms. They suggested that, where CPAs were no longer used in-house, they had seen no change in recovery rates, but that it was too early to comment for outsourced recoveries.

Potential benefits

40. The largest benefit from the proposal is expected to arise from the reduction in costs associated with setting up, agreeing and changing customers to alternative payment mechanisms, for example from CPA to direct debit. Customers in default and arrears may be more disengaged with their finances, suggesting a greater amount of time and effort may be required for such switching than if dealing with the average customer.

41. Assuming a range of 30 to 60 minutes of time across firms and customers to switch each customer, plus printing, mailing and telephone costs, and estimating that perhaps 3 million to 5 million loans might need to be switched, potential one-off cost savings may be in the range of £20m to £60m.

42. Additional cost savings, for customers, may arise from reduced bank charges associated with alternative payment methods. CPA has an advantage over the likely alternative mechanism, direct debit, in that failed payments do not see the customer incur bank charges. For customers of firms that do not seek to put in place a CPA in these circumstances, but might do so after the rule change instead of using direct debit, we estimate annual cost savings for consumers of £1.5m to £3m from not incurring bank charges.[38]

Potential costs

43. There is a risk that allowing firms to use a less burdensome process to introduce CPA where it is not in the original credit agreement may lead to some consumers ending up in a worse position[39], with firms making excessive payment requests or otherwise using the authority inappropriately.

38 This assumes the elimination of 150,000 to 300,000 such events where customers would otherwise be charged around £10 for each missed payment.

39 This would be a situation where firms more easily accessed accounts for money which consumers in difficulties might have preferred to use for alternative and more pressing needs.

44. However:

- Compared to the counterfactual, the firms that might reintroduce CPA are a small percentage (an estimated 10% to 20%) that in recent times ceased allowing the use of CPA for repayments in these circumstances. This would signal these firms are the most compliant or are more risk averse than the rest of the market. We would not expect this sector of the market to start behaving in a manner that would cause significant harm to consumers.

- We have not encountered evidence of widespread misuse of CPA outside of the HCSTC market, which is where the practices causing significant harm to consumers were concentrated, and which were separately dealt with through targeted regulation.

- Our existing rules require firms to use CPA proportionately and to exercise forbearance where the firm has reason to believe the customer is in financial difficulty

- Firms will be required to provide a clear explanation of why the CPA is proposed, and how it will operate, which is a requirement that is more favourable to consumers than using modifying agreements (which are otherwise allowed, but bring other administrative costs).

45. This suggests that the proposal is unlikely to lead to significant costs for consumers relative to the counterfactual, where most firms are already using CPA to collect repayments where the customer is in arrears or default, the lender is offering forbearance and the customer chooses to pay by CPA. However, to ensure that consumer harm does not materially arise we will keep this under review and consider further proposals if we find evidence of CPA misuse.

Amendments to DISP

46. We propose to require that not-for-profit debt advice bodies may refer customers to the availability of information on complaints procedures at the first point of contact orally, rather than in writing, but with a written reference included in the first written communication with the customer.

47. The proposal is designed to address the proportionality of the compliance costs associated with making customers aware of complaints procedures. Beyond reduced compliance costs, given that these firms are not-for-profit, this may result in some benefit to consumers through the firms' increased capacity to provide debt advice. Since the information on complaints procedures would still be provided, at least orally but (in many cases) in writing as well, this should mean no material reduction in the awareness of the availability of complaints procedures (and increased costs) for customers.

48. We have not prepared a cost benefit analysis for this proposal because we do not consider it will result in an increase in costs.

Mortgage Credit Directive

49. Our proposals in relation to mortgages, set out in Chapter 6, are consequential amendments required as a result of implementing the MCD. These primarily fall into two areas: consequential amendments to CONC, and amendments to MCOB in relation to MCD lending not secured on the home.

50. Our amendments to CONC follow directly from the proposals we consulted on in CP14/20 and so are covered by the CBA we published with that consultation paper.

51. In relation to MCD lending not secured on the home, we consider that the proposed rules would not increase costs or that any increase would be of minimal significance. This is because these rules are broadly aligned with the previous consumer credit rules that will be 'turned off' for firms. Accordingly, we are not required to conduct a CBA specifically in relation to these provisions.

Other proposals

52. We have made a series of other minor proposals, listed in the 'other proposals' section of each chapter. We consider that these proposals would have an insignificant impact on costs, whether to firms or consumers, and therefore have not carried out a CBA.

Q22: Do you have any comments on the cost benefit analysis?

Annex 3
Compatibility statement

1. This Annex explains our reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services Act 2012.

2. When consulting on new rules, we are required by section 138I(2)(d) FSMA to include an explanation of why we believe making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA.

3. This Annex also includes a compatibility statement on our recently made rules on credit brokers, discussed in Chapter 2 of this paper.

4. This Annex also sets out our view of how the rules proposed in this consultation are compatible with the duty on us to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives. We are also required by section 138K(2) FSMA to prepare a statement setting out our opinion on whether the proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons. This Annex sets out that opinion.

5. It also comments on our duties under the Legislative and Regulatory Reform Act 2006.

Compatibility with our objectives

6. The proposals set out in this consultation primarily advance our operational objectives of securing an appropriate degree of protection for consumers and promoting market integrity.

7. We consider these proposals are compatible with our strategic objective of ensuring that the relevant markets function well.[40]

The FCA's regulatory principles

8. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in section 3B FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

Compatibility with the duty to promote effective competition in the interests of consumers

9. In preparing the proposals set out in this consultation, we consider we have met our duty under section 1B(4) FSMA. This provides that we must, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out our general functions in a way which promotes effective competition in the interests of consumers.

40 'Relevant markets' are defined in section 1F FSMA.

Our proposals

10. We have set out in detail below the reasons why we are content that our proposals in each of the substantive areas covered by this consultation are compatible with our objectives, that we have had regard to our regulatory principles in developing the proposals, and that the proposals are consistent with our competition duty.

Guarantor lending

Compatibility with our objectives

11. We propose to require firms to provide adequate pre-contract explanations to guarantors and to assess the potential for the guarantor's commitments in respect of the credit agreement to affect their financial situation adversely. These proposals will help ensure that guarantors are provided with timely information that is accurate and fit for purpose, and will protect them from the potential harm of guaranteeing an agreement that is unaffordable for them.

Compatibility with our principles of regulation

The need to use our resources in the most efficient and economic way

12. We have had regard to this principle and do not believe that our proposals will have a significant impact on our resources or the way in which we use them.

The principle that a burden or restriction should be proportionate to the expected benefits

13. We have carried out a cost benefit analysis which found that firms say they are already carrying out the activities we propose to require of them and as such we expect the impact on them will be minimal.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

14. We have had regard to this principle and do not believe our proposals undermine it.

The general principle that consumers should take responsibility for their decisions

15. Our proposals support this general principle by requiring firms to provide certain explanations and information to potential guarantors, thus enabling them to make an informed decision about the risks the agreement potentially poses to them.

The responsibility of senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements

16. We have had regard to this principle and do not believe our proposals undermine it.

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

17. We have had regard to this principle and do not believe our proposals undermine it.

The desirability of publishing information relating to persons

18. We have had regard to this principle and do not believe our proposals undermine it.

The principle that we should exercise of our functions as transparently as possible

19. We have had regard to this principle and do not believe our proposals undermine it.

Compatibility with our competition duty

20. Our proposed rules would apply to regulated credit agreements where there is a guarantor and would not have a differential impact on firms who enter into such agreements. We do not believe they would have a significant effect on competition between firms who enter into such agreements and firms who do not, based on responses to our firm survey details in the CBA. We also do not believe the proposed rules would have a disproportionate impact on the ability of new firms to enter the market.

Financial promotions

Compatibility with our objectives

21. Financial promotions in relation to high-cost short-term credit (HCSTC) are required to include a risk warning unless, because of the limited space available on the medium of the communication in question, it is not reasonably practicable to include the warning. We propose to remove this exemption, with the result that HCSTC financial promotions carry the risk warning, thereby increasing protection for consumers.

22. We propose to restate as a rule our guidance on Principle 7 (that communications should be clear, fair and not misleading). This will strengthen requirements on firms, in a manner which is enforceable, again increasing protections for consumers.

23. We propose to amend our rules regarding relative prominence in financial promotions, to make our rules more straightforward for firms to implement but without amending the list of matters that must be prominent. We believe that this will result in lower compliance costs for firms without reducing protection for consumers.

24. Similarly, we propose to amend the rules that require inclusion of the representative APR, to make it easier for firms to identify when a representative APR must be included in a financial promotion. Again, we believe this will lower compliance costs but without reducing protection for consumers.

Compatibility with our principles of regulation

The need to use our resources in the most efficient and economic way

25. We have had regard to this principle and believe that our proposals in relation to financial promotions will help us use our resources in the most efficient and economic way: by making our rules in relation to relative prominence and representative APRs more straightforward, it will be easier for firms to understand and comply with them and easier for us to assess their compliance. Removing the exemption from the requirement to include a HCSTC risk warning simplifies our supervision of that rule.

The principle that a burden or restriction should be proportionate to the expected benefits

26. We have had regard to this principle by ensuring that the proposals we are making in relation to financial promotions will reduce compliance costs for firms, and are content that they will do so without reducing consumer protection.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

27. We have had regard to this principle and do not believe our proposals undermine it.

The general principle that consumers should take responsibility for their decisions

28. We have had regard to this principle and do not believe our proposals undermine it.

The responsibility of senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements

29. We have had regard to this principle and do not believe our proposals undermine it.

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

30. We have had regard to this principle and do not believe our proposals undermine it.

The desirability of publishing information relating to persons

31. We have had regard to this principle and do not believe our proposals undermine it.

The principle that we should exercise of our functions as transparently as possible

32. We have had regard to this principle and do not believe our proposals undermine it.

Compatibility with our competition duty

33. We have considered whether our proposal to remove the exemption from the requirement to display the HCSTC risk warning in financial promotions in an electronic medium where space is limited might create a barrier to building brand recognition for new entrants to the market. This was on the basis that firms are able to avoid triggering the requirement for the risk warning by constructing financial promotions which are considered as 'brand advertising'. However, it is open to firms to explain the nature of their business in such advertising without triggering the requirement, thus it does not present a barrier to new businesses building up awareness of their services among the customers they seek to attract.

34. We do not believe our proposal to restate as a rule our guidance on Principle 7 (clear, fair and not misleading) will have any effect on competition.

35. We do not believe our proposal to amend rules regarding relative prominence in financial promotions will have any effect on competition.

36. We do not believe that our proposal to amend the rules requiring inclusion of the representative APR will have any effect on competition.

Debt

Compatibility with our objectives

37. If a continuous payment authority (CPA) is not included in a credit agreement when presented to the borrower, a formal modifying agreement is required if the lender wishes to introduce a CPA after the agreement has been made. We propose to allow firms to use CPA as a debt collection mechanism where the customer is in arrears or default and the lender is exercising forbearance. We believe this will reduce compliance costs for firms without reducing consumer protections, and is likely to be in the interest of consumers where there is a risk of missed payments as alternative payment mechanisms such as direct debit incur bank charges where payment requests fail.

Compatibility with our regulatory principles

The need to use our resources in the most efficient and economic way

38. We have had regard to this principle and do not believe that our proposals will have a significant impact on our resources or the way in which we use them.

The principle that a burden or restriction should be proportionate to the expected benefits

39. The new rules will be simpler and cheaper for firms and we are content that they do not undermine protection for consumers.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

40. We have had regard to this principle and do not believe our proposals undermine it.

The general principle that consumers should take responsibility for their decisions

41. We have had regard to this principle and do not believe our proposals undermine it.

The responsibility of senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements

42. We have had regard to this principle and do not believe our proposals undermine it.

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

43. We have had regard to this principle in developing our proposals and have ensured that they take account of the different roles and responsibilities of lenders and debt collectors in collecting repayments.

The desirability of publishing information relating to persons

44. We have had regard to this principle and do not believe our proposals undermine it.

The principle that we should exercise of our functions as transparently as possible

45. We have had regard to this principle and do not believe our proposals undermine it.

Compatibility with our competition duty

46. We do not believe that our proposal to allow firms to introduce CPA as a means of collecting repayments where a customer is in arrears or default, the lender is offering forbearance and the use of CPA was not specified in the original credit agreement will have any effect on competition.

Not-for-profit debt advice bodies and complaints rules

Compatibility with our objectives

47. We propose to amend our rules that require NFP debt advice bodies to notify customers of their complaints procedures. We also propose to exempt firms that do not enter into contracts with customers from the requirement to give or confirm their advice in writing. We believe these amendments will reduce compliance costs for firms but, given the circumstances in which the amended rules will apply, without reducing consumer protections.

Compatibility with our regulatory principles

The need to use our resources in the most efficient and economic way

48. We have had regard to this principle and do not believe that our proposal will have any effect on our resources or the way in which we use them.

The principle that a burden or restriction should be proportionate to the expected benefits

49. We had regard to this principle in the development of our proposal. We believe that the existing rule places a burden on NFP debt advice bodies that may impact upon their ability to provide debt advice and so are proposing an alternative way for such firms to meet the requirement.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

50. We have had regard to this principle and do not believe our proposal undermines it.

The general principle that consumers should take responsibility for their decisions

51. We have had regard to this principle and do not believe our proposal undermines it.

The responsibility of senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements

52. We have had regard to this principle and do not believe our proposal undermines it.

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

53. Our proposal recognises the difference in the nature and objectives of NFP debt advice bodies. When designing our consumer credit regulatory regime we took the decision to apply the same rules in relation to debt counselling and debt adjusting to NFP debt advice bodies and profit-seeking firms, but believe it is proportionate to take a different approach in relation to complaints awareness rules.

The desirability of publishing information relating to persons

54. We have had regard to this principle and do not believe our proposal undermines it.

The principle that we should exercise of our functions as transparently as possible

55. We have had regard to this principle and do not believe that proposal undermines it.

Compatibility with our competition duty

56. While our proposal would reduce the burden placed on NFP debt advice bodies by our rules regarding awareness of complaints procedures, this is consistent with our approach in minimising the additional impact of our regime for NFP debt advice bodies and we do not believe that it will have a significant effect on the ability of profit-seeking firms offering debt advice to compete, nor will it create a barrier to new entrants.

Mortgage Credit Directive

Compatibility with our objectives

57. We are proposing a number of consequential amendments as a result of implementing the MCD. The compatibility of our proposals implementing the MCD was set out in the consultation paper

published in September 2014.[41] In that paper we noted that the proposals primarily advance our operational objective of securing an appropriate degree of protection for consumers, and that we consider the proposals to be compatible with our strategic objective of ensuring that the relevant markets function well. More detail is available in the Compatibility Statement which accompanied that consultation.

Compatibility with our regulatory principles

58. Our proposals in relation to mortgages are consequential amendments required as a result of the implementation of the MCD. Their development took place as part of the process covered in the Compatibility Statement which accompanied our consultation paper in September.

Compatibility with our competition duty

59. Our proposals in relation to mortgages are consequential amendments required as a result of the implementation of the MCD, consulted on in September 2014. As part of the development of the implementation of the MCD, each of our proposals was subject to an assessment of the likely impact on competition in the market, and we were satisfied that there will be no harm to competition that cannot be justified, on balance, by our objective to secure an appropriate degree of protection for consumers. Our assessment of the impact on competition in that consultation paper found that the majority of our proposals will not have a material adverse impact on competition.

Credit broker rules

Compatibility with our objectives

60. The rules we recently made in relation to credit brokers, discussed in detail in Chapter 2 of this paper, were made to advance our operational objective of securing an appropriate degree of protection for consumers. We had received evidence of significant harm to consumers caused by fee-charging brokers, typically involving a fee being charged without the consumer's awareness or express consent and often involving subsequent fees being charged by third parties.

Compatibility with our regulatory principles

The need to use our resources in the most efficient and economic way

61. The rules we made in December 2014 create an audit trail documenting the information notice provided to customers, and their response acknowledging receipt of the notice, which enables us to more easily assess whether a given firm is compliant. The rules requiring fee-charging credit brokers to provide a quarterly return of the websites they operate will similarly enable us to monitor compliance with our financial promotion and other rules.

The principle that a burden or restriction should be proportionate to the expected benefits

62. We carried out an assessment of the costs and benefits of our rules before we made them (more details are in Chapter 2). This indicated that the realistic benefits for consumers that the new rules would be likely to achieve would exceed the costs for firms of implementing the new rules and complying with them on an ongoing basis.

41 www.fca.org.uk/your-fca/documents/consultation-papers/cp14-20

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

63. We have had regard to this principle and do not believe that our rules undermine it.

The general principle that consumers should take responsibility for their decisions

64. The rules promote this general principle by aiming to correct an information asymmetry which made it in many cases unreasonable to hold consumers responsible for their decisions. For example, terms and conditions detailing broker fees were misleadingly worded, not prominent or simply absent and/or their card details were obtained by misleading the consumer as to the firm's purpose for asking for them.

The responsibility of senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements

65. We have had regard to this principle and do not believe that our rules undermine it.

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

66. We have had regard to this principle and do not believe that our rules undermine it.

The desirability of publishing information relating to persons

67. We have had regard to this principle and do not believe that our rules undermine it.

The principle that we should exercise of our functions as transparently as possible

68. We were mindful of the principle when making our rules and publishing PS14/18, and included an explanation of our reasons for making the rules and for doing so without consultation.

Compatibility with our competition duty

69. The rules we made on credit brokers in December 2014 place additional requirements on credit brokers that charge customers fees. We have not identified business models and markets where this proposal will alter the nature of competition, other than the sub-prime credit brokerage market. In that market, it is possible that the increased awareness of fees will create incentives for brokers to roll fees into the loan or increase their reliance on commissions from lenders. Both of these developments may be detrimental to price transparency. We have included an estimate of this effect in our ongoing costs and we believe this impact is proportionate when considered against the detriment being caused to consumers before the rules were made by brokerage fees which have not been fully disclosed to them.

70. Where awareness of the existence of a fee may deter consumers from using brokers, we consider that this promotes competition by encouraging fee-charging brokers in relevant markets to compete on price or on other features of their service. Some consumers may be deterred from using fee-charging brokers as a result of our rules, not due to the awareness of a fee, but due to the extra time needed to apply through fee-charging brokers. However, the time increase for an individual consumer is marginal, and therefore, in aggregate this will not impact competition in the market. We included an estimate of the opportunity cost of the time increase as part of our assessment of the costs of the rules.

Other proposals

71. We are also making a number of minor proposals to amend our rules and guidance in relation to consumer credit, as detailed in each chapter. These are either administrative in nature or to clarify the application of our rules for firms.

Impact on mutual societies

72. Section 138K FSMA requires us to prepare a statement about the impact of proposed rules on mutual societies. In particular, we are required to set out our opinion on whether this will be significantly different from the impact on other authorised persons and, if so, details of the difference.

73. We do not expect the proposals in this paper to have a significantly different impact on mutual societies. The proposals either do not affect mutual societies or affect them no differently than other authorised persons and in a way which would not present them with any more or less of a burden than other authorised persons.

Legislative and Regulatory Reform Act 2006 (LRRA)

74. We are required under the LRRA to have regard to the principles in the LRRA and to the Regulators' Compliance Code when determining general policies and principles and giving general guidance (but this duty does not apply to regulatory functions exercisable through our rules).

75. We are satisfied that we have had regard to the principles in the LRRA and to the Regulators' Compliance Code for the parts of the proposals that consist of general policies, principles or guidance.

Annex 4
Equality impact assessment

Introduction

1. We are required under the Equality Act 2010 to consider whether our proposals could have a potentially discriminatory impact 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 advance equality of opportunity when carrying out our activities.

2. We have conducted an initial equality impact assessment (EIA) of our proposals (and of the rules we have already made on credit brokers) to ensure that the equality and diversity implications are considered.

3. The main outcome of our initial assessment is that the proposals in this paper do not have a potentially discriminatory impact on any of the groups with protected characteristics.

Credit broking rules

4. Our credit broking rules, which we made in December 2014 without consultation under section 138L FSMA, were not required to include an analysis of the equality impacts of those rules. We are voluntarily publishing an assessment of their impact in this Annex:

- Our credit broker rules are likely to particularly affect users of HCSTC and similar types of credit. Data we collected as part of the work on the HCSTC price cap indicated these people are more likely to be male and from black and minority ethnic groups.

- We expect that our new credit broking rules will have a significant impact and will reduce some of the significant harm experienced by consumers in the HCSTC and adjacent markets (including by enabling consumers to identify whether the firm they are dealing with is a broker or a lender) as well as better enabling supervisory and enforcement action against non-compliant firms.

- We know from data collected as part of our work on the HCSTC price cap that users of HCSTC are more likely to be male. It is reasonable to assume that consumers who suffer harm at the hands of credit brokers reflect the same demographics, as the brokers we have received complaints about primarily make introductions to sources of HCSTC as well as lenders in adjacent markets, such as guarantor loans and logbook loans. We believe consumers who use credit brokers will benefit from our rules.

- We also found that black and minority ethnic groups are over-represented among users of HCSTC loans. As above, it follows that users of credit brokers that make introductions to these and similar sources of credit would reflect the same demography. As such, these groups may benefit from our rules.

- We did not find evidence that the rules will have particular impacts on other protected groups.

Initial assessment

5. Our proposals in this consultation paper build on the package of measures introduced in April 2014. In the EIA accompanying CP13/10 we noted that consumers, including the protected groups, will benefit in a range of ways, including better treatment by firms and better choice of products which meet their needs.

6. In the most part our proposals will have minor impacts on protected groups but will generally provide greater clarity for consumers on some key matters as well as assisting firms.

7. We have considered our proposals in relation to the protected groups and do not believe that they will have a particular impact on the groups. As our proposals develop we will continue to ensure we consider issues relevant to the protected groups in our assessment.

Next steps

8. The EIA process is ongoing, and will not be completed until we develop and publish our final rules and guidance. As a result, we are seeking additional input from stakeholders to help us further investigate and establish the extent of any potential impacts of the proposals in this paper.

9. We would also welcome any comments or information respondents may have on any equality and diversity issues they believe arise from our proposals.

Q23: Do you agree with our initial assessment of the impacts of our proposals on the protected groups? Are there any potential impacts we should consider?

Appendix 1
Draft Handbook text (chapters 2-5)

Appendix

CONSUMER CREDIT (AMENDMENT NO 2) INSTRUMENT 2015

Powers exercised

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

(1) section 137A (The FCA's general rules);
(2) section 137R (Financial promotion rules);
(3) section 137T (General supplementary powers); and
(4) section 139A (The FCA's power to give guidance).

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

Commencement

C. (1) Subject to (2), this instrument comes into force on [date 2015].
(2) Annex D (DISP) and Part 1 of Annex E (CONC) to this instrument come into force on [date 2015].

Amendments to the FCA Handbook

D. 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

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

Notes

F 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

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

By order of the Board of the Financial Conduct Authority
[*date*]

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 a *person* 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 this *person* 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.

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, the quote or estimate is an offer and 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 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 and 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 will 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* or a *hire-purchase agreement* ~~where the goods being hired is a vehicle~~;

…

(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 and a charge payable 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

…

Reporting requirement

16.12.3 R …

(3) Paragraph (2) does not apply to:

…

(aa) *data item* CCR008 from *RAG* 12, where *SUP* 16.3.6 R to *SUP* 16.3.10 G will apply, if the *firm* is:

(i) a *firm* with only an *interim permission*; or

(ii) a *firm*, which was an *authorised person* immediately before 1 April 2014, with an *interim permission* that is treated as a variation of *permission*;

(*FCA Handbook* only)

…

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~~	Quarterly~~: 1 January, 1 April, 1 July and 1 October~~	30 *business days*

		(note 11)	(note 11)	
…				
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 and striking through indicates deleted text.

Comes into force on [date]

1.2 Consumer awareness rules

…

Publishing and providing summary details

…

1.2.2 R Where the activity does not involve a sale, the obligation in *DISP* 1.2.1R(2)(b): ~~shall apply at, or immediately after, the point when contact is first made with an *eligible complainant*.~~

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

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

(a) 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

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

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 [date]

7.6 Exercise of a continuous payment authority

Recovery and continuous payment authorities etc

...

7.6.2A R (1) This paragraph 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 a *person* in (a) the effect of which is that a payment by the *borrower* 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* 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 *borrower*) 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 they come within *CONC* 8.3.4AR. 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 or 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. It is only 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*, that a *firm* will be able to satisfy itself on the point. The *firm* should record 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 [date]

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;

[**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 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

…

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

…

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

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

…

3.3.3 R 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*]

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* or affordability, may contravene *CONC* 3.3.3R.

~~Guidance on~~ What does "clear, fair and not misleading" mean?

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]

3.3.5A R (1) 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.

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

…

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* 3.3.5AR(2) 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~~ A reference to 0% credit or interest-free credit indicates a rate of interest. 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 rate of interest or a charge (to which any *rule* in *CONC* 3.5 applies) 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 expect to enter into as a result of the *financial promotion*.

(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 comparison, 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 that *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* 3.5.7 R (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:

(a) …; or

(b) …; or

(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 signpost *customers* to 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 (and section 48 defines canvassing off trade premises for this purpose); and

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

…

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 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; ~~and~~

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

(2B) any ~~the associated cost and~~ 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;

(2D) the sophistication of the *customer* in *credit* matters;

…

4.2.7A G (1) 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 under *CONC* 4.2.5R to each of them. 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* because an oral explanation of the matters in *CONC* 4.2.5R(2)(a), (b) or (e) was given to a different *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, the *lender* or *credit broker* should consider the factors referred to in *CONC* 4.2.7G separately for each *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) a *person* 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* 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 an explanation of that agreement complying with *CONC* 4.2.22R(2) has been provided to the *customer* by the *credit broker*.

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*; and

(b) a *person* 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 paragraph (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) a *person* 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 …

(2) A *firm* should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of the *credit* being sought and the potential risks to the *customer.* The risk of *credit* not being *sustainable* directly relates to the amount of *credit* granted and the ~~*total charge for*~~ cost of the *credit* relative to the *customer's* financial situation.

…

(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* or *credit broker* should consider whether it may be appropriate to have regard to the financial situation of each *customer* separately (as well as collectively), and to the risk to that *customer* arising from the *credit* being sought.

…

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) a *person* 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 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 The existence of a guarantor, 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) a *person* 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 *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 The existence of a guarantor, 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) a *person* 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 existence of a

guarantor, 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 a *person* 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 a *regulated credit agreement* or a *P2P agreement*; 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:

(a) a reference to a *borrower*, a *customer* or a *hirer* (other than in *CONC* 7.6.12AG and *CONC* 7.6.13AG) includes a reference to a *person* other than the *borrower* or the *hirer* who 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* (in this chapter, referred to as "the guarantor"), where it would not do so but for this *rule* (see *CONC* 7.3.1G(2));

(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 7.19.

…

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 *FCA's* arrears information sheet, 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 given 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 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*)	…
	SUP 6 (Applications to vary and cancel Part 4A permission 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 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 fees or charges payable by the *borrower* to a *credit broker* in connection with the agreement (if these are 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 fees or charges payable by the *borrower* to a *credit broker*, if these are 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.

TP7 Transitional provision in relation to the Consumer Credit (Amendment No 2) Instrument 2015

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) 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 [date 2015 to 21 March 2016]	[date 2015]

…

Schedule 1 Record keeping requirements

…

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
…				
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.

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.

…

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~~ twelve;

…

…

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*.

…

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 services 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 services 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 services 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 services 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 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 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*, or by an undertaking in the same group as the *lender*, to a *borrower* as an incident of employment with 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* 8.17A.6G and *PERG* 8.17A.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~~ sections 414A and 414D of the Companies Act 2006 (strategic reports) or sections 415 and 419 of that Act (directors' reports), or corresponding legislation ~~in Northern Ireland or~~ in another *EEA State*.

Appendix 2
Draft Handbook text (chapter 6)

Appendix

CONSUMER CREDIT (MORTGAGE CREDIT DIRECTIVE) INSTRUMENT 2015

Powers exercised by the Financial Conduct Authority

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

(1) section 137A (the FCA's general rules);
(2) section 137R (financial promotion rules);
(3) section 137T (general supplementary powers);
(4) section 139A (the FCA's power to give guidance).

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

Commencement

C. This instrument comes into force as follows:

(1) on 21 September 2015 as follows:

(a) Part 1 of Annex A;
(b) Part 2 of Annex A, but only for the purposes of Part 1 of Annex A;

(2) the remainder of the instrument comes into force on 21 March 2016.

Amendments to the FCA Handbook

D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex A to this instrument.

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

Amendments to material outside the Handbook

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

Notes

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

Citation

H. This instrument may be cited as the Consumer Credit (Mortgage Credit Directive) Instrument 2015.

By order of the Board of the Financial Conduct Authority
[*date*]

Annex A

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, all of the text is new and is not underlined.

[*Editor's note*: the following version of *MCOB* 14 replaces the version consulted upon in CP14/20.]

Part 1: Comes into force on 21 September 2015

TP1.1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
…					
53	*MCOB* 14	R	A *firm* to which *MCOB* 14 will apply from 21 March 2016 may elect to comply with *MCOB* 14 from 21 September 2015. If so, from the date of that election: (i) the *rules* and other provisions in *CONC* shall cease to apply to the *firm* with respect to the conduct governed by *MCOB* 14, except for *CONC* 1.2.8R, *CONC* 1.2.9R, and any related provisions; and (ii) the *firm* must comply with *MCOB* 14 with respect to all of its lending under *MCD article 3(1)(b) credit agreements* and *MCD article (3)(1)(b) intermediation activity*.	21 September 2015 to 20 March 2016	21 March 2016
54	*MCOB* TP 1.53	G	*MCOB* TP 1.53 allows a *firm* to apply the *MCD* requirements relating to lending under *MCD article 3(1)(b) credit agreements* and *MCD article (3)(1)(b) intermediation activity* early.		

Part 2: Comes into force on 21 March 2016

[*Editor's Note:* The coming into force of the provisions in Part 2 on 21 March 2016 is subject to a *firm's* right to elect to comply with these provisions earlier, from 21 September 2015 (see *MCOB* TP 1.53 in Part 1, above). If a *firm* makes that election, these provisions come into force in relation to that *firm* from the date of the election.]

Insert the following new chapter after MCOB 13. The text is not underlined.

14 MCD article 3(1)(b) credit agreements

14.1.1 G The purpose of *MCOB* 14 is to apply *rules* and *guidance* in *MCOB* (including, but not restricted to, rules that transpose or implement the *MCD*) to:

(1) *MCD article 3(1)(b) creditors*; and

(2) *MCD article 3(1)(b) credit intermediaries*;

and to identify *rules* and *guidance* in *CONC* that also apply, or may (subject to the election in *MCOB* 14.1.5R) apply, to them.

14.1.2 R A *firm* must treat a transaction or proposed transaction as involving an *MCD article 3(1)(b) credit agreement* if the *firm* knows, or has reasonable cause to suspect, that its purpose is, or will be, to acquire or retain property rights in land or in an existing or projected building.

14.1.3 R Subject to *MCOB* 14.1.5R and *MCOB* 14.1.7R, the following provisions in *MCOB* are, so far as applicable and unless otherwise stated in this *rule*, deemed to apply to *MCD article 3(1)(b) creditors* and *MCD article 3(1)(b) credit intermediaries*, and must be construed and applied accordingly:

(1) *MCOB* 2.3; *MCOB* 2.5A; *MCOB* 2A; *MCOB* 3A.1 to *MCOB* 3A.5; *MCOB* 3B; *MCOB* 4A; *MCOB* 5A; *MCOB* 6A; *MCOB* 7.5; *MCOB* 7A; *MCOB* 7B; *MCOB* 10A; *MCOB* 11.6; *MCOB* 11A; *MCOB* 12.3; *MCOB* 12.5; *MCOB* 13 (except for *MCOB* 13.3.9R);

(2) *MCOB* 4.4A.1R(1) and (2), *MCOB* 4.4A.4R(1)(a) and (c), and *MCOB* 4.4A.8R (1)(a), (c), (d) and (2)(e), but only to *MCD article 3(1)(b) credit intermediaries*;

(3) *MCOB* 4.7A (except for *MCOB* 4.7A.1G(2) to (4), *MCOB* 4.7A.11R to *MCOB* 4.7A.14E, and *MCOB* 4.7A.24R to *MCOB* 4.7A.25R), but only to *MCD credit advisers*.

14.1.4 R Any *rule* that is deemed to apply to an *MCD article 3(1)(b) creditor* or an

MCD article 3(1)(b) credit intermediary, as a result of *MCOB* 14.1.3R, is, for the purposes of that *rule*, construed as follows:

(1) any reference to 'land' is deemed to include a reference to property rights in an existing or projected building;

(2) any reference to *regulated mortgage contract* or *MCD regulated mortgage contract* is deemed to include a reference to an *MCD article 3(1)(b) credit agreement*;

(3) any reference to *qualifying credit* is deemed to include an *MCD article 3(1)(b) credit agreement*;

(4) any reference to a *firm* is deemed to include an *MCD article 3(1)(b) creditor* or an *MCD article 3(1)(b) credit intermediary.*

14.1.5 R An *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* must elect to comply with either:

(1) *MCOB* 3A.1 to *MCOB* 3A.5; or

(2) *MCOB* 3A.2, *MCOB* 3A.5, and *CONC* 3 (except for *CONC* 3.4, *CONC* 3.5.3R to *CONC* 3.5.10R, *CONC* 3.6.6R, and *CONC* 3.9).

14.1.6 G (1) A *firm* should generally make one election under *MCOB* 14.1.5R for all of its *MCD article (3)(1)(b) credit intermediation activity*, or all of its lending under *MCD article 3(1)(b) credit agreements*, at any given time.

(2) Where a *firm* wishes to make different elections for different types of *MCD article (3)(1)(b) credit intermediation activity* or lending under *MCD article 3(1)(b) credit agreements*, it should maintain processes to ensure that the *rules* applicable to each type of activity and each agreement or *customer* are clearly identifiable to its staff and, on request, to the *FCA*. Its processes should also ensure that each agreement or *customer* is dealt with in compliance with the *rules* applicable to it or them.

14.1.7 R The following provisions do not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* where the conditions in *CONC* 1.2.12R(1) and (2) are fulfilled: *MCOB* 7.5 and *MCOB* 13 (except for *MCOB* 13.3.1AR to *MCOB* 13.3.1BG, *MCOB* 13.3.2AR to *MCOB* 13.3.8G, and *MCOB* 13.6.1R to *MCOB* 13.6.2G, which apply even where those conditions are fulfilled).

[**Note**: article 60H(2) of the *Regulated Activities Order*]

14.1.8 G The purpose of *MCOB* 14.1.7R is to enable a high net worth borrower under an *MCD article 3(1)(b) credit agreement* to waive the protections and remedies applicable to *regulated credit agreements*, except for those that transpose or implement the *MCD*.

14.1.9 G Subject to *CONC* 1.2.12R (the exemption for high net worth borrowers), an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* is also subject to the following provisions in *CONC: CONC* 1.2, *CONC* 1.3, *CONC* 2.2, *CONC* 2.4, *CONC* 2.5, *CONC* 2.7, *CONC* 2.8, *CONC* 2.9, *CONC* 2.10, *CONC* 4.4.2R(4), *CONC* 4.6, *CONC* 5.4, *CONC* 6.4, *CONC* 6.5, *CONC* 6.7, *CONC* 6.8, *CONC* 11.

Annex B

Amendments to the Consumer Credit sourcebook (CONC)

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

1.2.1 R Subject to *CONC* 1.2.8R and *CONC* 1.2.9R, *CONC* applies to a *firm* with respect to carrying on *credit-related regulated activities* and connected activities, unless otherwise stated in, or in relation to, a *rule*.

…

Agreements secured on land

1.2.7 G (1) *CONC* does not apply to *credit agreements* secured on *land*, with some limited exceptions as set out in (3) and (4) below.

(2) Agreements secured by a second or subsequent charge on the *customer's* home are, where regulated, governed by *MCOB* from 21 March 2016 (subject to transitional provisions allowing for the earlier adoption of *MCOB*). For detailed guidance on the regulation of secured lending, see *PERG* 4.

(3) The agreements secured on *land* to which *CONC* applies include the following agreements (unless otherwise exempt):

(a) a *first charge legal mortgage* entered into before 31 October 2004 to which the *CCA* applies;

(b) an agreement under which the *borrower* is a relevant recipient of credit (see article 60L of the *Regulated Activities Order*); and

(c) an *article 3(1)(b) credit agreement* secured on *land* used for non-residential purposes, to the extent specified in *CONC* 1.2.8R.

(4) Broking in relation to the above *agreements* may be *credit broking* under article 36A of the *Regulated Activities Order*, whether the agreement is regulated or exempt. There are also some other secured *credit agreements* which are exempt, but the broking of which may still constitute *credit broking*, because some exemptions are disregarded by article 36A of the *Regulated Activities Order*. One example is a loan of more than £25,000 entered into wholly or predominantly for the purposes of a *borrower's* business and secured by a second or subsequent charge on the *borrower's* home.

Application to MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries

1.2.8 R Subject to *CONC* 1.2.12R, the following provisions of *CONC* apply to an *MCD article 3(1)(b) creditor* and an *MCD article 3(1)(b) credit intermediary*: *CONC* 1.2, *CONC* 1.3, *CONC* 2.2, *CONC* 2.4, *CONC* 2.5, *CONC* 2.7, *CONC* 2.8, *CONC* 2.9, *CONC* 2.10, *CONC* 4.4.2R(4), *CONC* 4.6, *CONC* 5.4, *CONC* 6.4, *CONC* 6.5, *CONC* 6.7, *CONC* 6.8, *CONC* 11.

1.2.9 R An *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* must elect to comply with either:

(1) *MCOB* 3A.1 to *MCOB* 3A.5; or

(2) *MCOB* 3A.2, *MCOB* 3A.5, and *CONC* 3 (except for *CONC* 3.4, *CONC* 3.5.3R to *CONC* 3.5.10R, *CONC* 3.6.6R, and CONC 3.9).

1.2.10 G (1) A *firm* should generally make one election under *CONC* 1.2.9R for all of its *MCD article (3)(1)(b) credit intermediation activity* or all of its lending under *MCD article 3(1)(b) credit agreements*, at any given time.

(2) Where a *firm* wishes to make different elections for different types of *MCD article (3)(1)(b) intermediation activity* or lending under *MCD article 3(1)(b) credit agreements*, it should maintain processes to ensure that the *rules* applicable to each type of activity and each agreement or *customer* are clearly identifiable to its staff and, on request, to the *FCA*. Its processes should also ensure that each agreement or *customer* is dealt with in compliance with the *rules* applicable to it or them.

1.2.11 G An *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* is subject to *rules* in *MCOB*, in accordance with *MCOB* 14.1.3R to *MCOB* 14.1.5R.

1.2.12 R *CONC* 1.2.8R does not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* where:

(1) the *MCD article 3(1)(b) credit agreement* would be an exempt agreement pursuant to article 60H(1) of the *Regulated Activities Order* but for paragraph 1(b)(ii)(bb) of article 60H or article 60HA of the *Regulated Activities Order*; and

(2) the following *rules* are complied with as if the agreement is exempt: *CONC* App 1.4.1R to *CONC* App 1.4.4R, *CONC* App 1.4.6AR and *CONC* App 1.4.7R.

[**Note**: article 60H(2) of the *Regulated Activities Order*]

1.2.13 G The purpose of *CONC* 1.2.12R is to enable a high net worth borrower under an *MCD article 3(1)(b) credit agreement* to waive the protections and

remedies applicable to *regulated credit agreements*, except for those that transpose or implement the *MCD*.

…

2.2.2 G …

[**Note** paragraph 7.14 of *ILG* ~~and 6.3 of *SCLG*~~] …

…

4.2.2 G …

[**Note:** section 55A(6) of *CCA* and paragraph~~s~~ 3.1(box) of *ILG* ~~and 3.5 of *SCLG*~~]

…

7.3.17 R …

[**Note**: paragraphs 7.14 of *ILG*~~,~~ and 3.7t of *DCG* ~~and 6.3 of *SCLG*~~]

…

7.3.19 G *Firms* seeking to recover debts under *regulated credit agreements* secured ~~by second or subsequent charges~~ on land in England and Wales should have regard to the requirements of the relevant pre-action protocol (PAP) issued by the Civil Justice Council. …

…

15 ~~Second charge lending~~ Agreements secured on land

…

15.1.2 G *Firms* which carry on *consumer credit lending* or *credit broking* should comply with all *rules* which apply to that *regulated activity* in *CONC* and other parts of the ~~Handbooks~~ *Handbook*. For example, *CONC* 7 applies to matters concerning arrears, default and recovery (including repossession) and applies generally, including to agreements to which this chapter applies. This chapter sets out specific additional requirements and *guidance* that apply in relation to ~~agreements~~ *credit agreements* secured on *land* (see *CONC* 1.2.7G). *Regulated mortgage contracts* and *home purchase plans* are not *regulated credit agreements* and are excluded, to the extent specified in article 36E of the *Regulated Activities Order*, from *credit broking*.

Conduct

15.1.3 G …

~~**[Note**: paragraph 3.2 of *SCLG*]~~

15.1.4 G …

~~**[Note**: paragraph 3.8 of *SCLG*]~~

15.1.5 R (1) …

~~**[Note:** paragraph 2.1 of *SCLG***]**~~

(2) …

~~**[Note**: paragraph 3.4 of *SCLG*]~~

(3) …

~~**[Note**: paragraph 3.4 of *SCLG*]~~

(4) …

~~**[Note**: paragraphs 3.6 and 4.4 of *SCLG*]~~

(5) …

~~**[Note**: paragraph 3.6 of *SCLG***]**~~

15.1.6 G …

~~[**Note**: paragraph 3.4 of *SCLG*]~~

15.1.7 R …

[~~**Note**: paragraph 3.5 of *SCLG*~~]

15.1.8 R (1) ...

~~**[Note**: paragraph 4.2 of *SCLG***]**~~

(2) ...

~~**[Note:** paragraph 3.5 of *SCLG*]~~

(3) ...

~~**[Note:** paragraphs 2.1 and 4.2 of *SCLG***]**~~

(4) ...

~~**[Note:** paragraph 2.1 of *SCLG*]~~

…

15.1.10 G …

~~[**Note**: paragraph 3.14 of *SCLG*]~~

15.1.11 R …

~~**[Note**: paragraph 4.3 of *SCLG*]~~

15.1.12 R …

~~**[Note**: paragraph 4.4 of *SCLG*]~~

15.1.13 R …

~~**[Note**: paragraph 4.5 of *SCLG***]**~~

15.1.14 G ~~Where a *firm* considers taking action to repossess a *customer's* home, it should, where permitted, establish contact with the holder of any charges in priority to the *firm's* charge to minimise adverse impacts on the *customer*.~~

~~[**Note:** paragraph 6.2 of *SCLG*]~~

[deleted]

15.1.15 R …

~~**[Note:** paragraph 6.5 of *SCLG*]~~

…

Appendix 1 Total charge for credit rules

App 1.3.1 R (1) …

(1A) Paragraphs (2), (4) and (5), below, do not apply where the applicable agreement is an *MCD article 3(1)(b) credit agreement*.

…

…

App 1.4.1 R (1) For the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order*, except where article 60H(2) and *CONC* 1.2.12R apply, …

(2) For the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order*, …

(3) For the purposes of articles 60H(1)(e) and 60Q(d) of the *Regulated Activities Order*, …

App 1.4.2 R A declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* shall …

…

App 1.4.6 R **Declaration by high net worth borrower or hirer**

The declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* must have the following form and content-

"Declaration by high net worth borrower or hirer

(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of article 60H(1)(d) or article 60Q(c) of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001. …

App 1.4.6A R **Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement**

The declaration for the purposes of article 60H(2) of the *Regulated Activities Order* must have the following form and content-

"Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement

(article 60H(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of article 60H(1)(d) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under the Financial Services and Markets Act 2000, except for those that transpose or implement the Mortgage Credit Directive, Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property.

I am aware that if I am in any doubt as to the consequences of making this declaration then I should seek independent legal advice."

App 1.4.7 R **Statement of high net worth**

A statement of high net worth for the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order* must have the following form and content:

"Statement of High Net Worth

(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) …

Annex C

Amendments to the Perimeter Guidance manual (PERG)

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

4.4.1A G (1) Article 61(3)(c) of the *Regulated Activities Order* states that credit includes a cash loan and any other form of financial accommodation. Although 'financial accommodation' has a potentially wide meaning, its scope is limited by the terms used in the definition of a *regulated mortgage contract* set out in *PERG* 4.4.1G. Whatever form the financial accommodation may take, article 61(3)(a) envisages that it must ~~involve~~ include an obligation to repay on the part of the individual who receives it.

(2) In the *FCA's* view, an obligation to repay implies the existence, or the potential for the existence, of a debt owed by the individual to whom the financial accommodation is provided (the 'borrower') to the *person* who provides it (the 'lender'). ~~Consequently, for any facility under which any form of financial accommodation is being provided, the test is whether it allows for the possibility that the *person* providing the financial accommodation may be placed in a position where he becomes a creditor of the individual to whom he is providing it.~~ …

(3) For example, a bank would be providing ‘credit’ which, subject to the other requirements being met, could amount to a *regulated mortgage contract* if it gives a guarantee that:

(a) creates a debt or a potential debt; and

(b) allows for deferred payment.

Financial Conduct Authority

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