

# Relending by High Cost Lenders – annex 2

17 March 2020

This annex should be read in conjunction with the multi-firm review on [Relending by High cost lenders](#)

## General

The Principles for Businesses: a reminder

**CONC 1.1.4 G 01/01/2014**

(4) *Principle* 6 (a *firm* must pay due regard to the interests of its *customers* and treat them fairly);

## Marketing

### Unfair business practices

#### **CONC 3.8.2 R 01/11/2018**

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

- (3) promote credit where the firm knows, or has reason to believe, that the agreement would be unsuitable for that customer in the light of the customer's financial circumstances or, if known, intended use of the credit.

### The clear fair and not misleading rule and general requirements

#### **CONC 3.3.1 R 02/11/2015**

(1) A firm must ensure that a communication or a financial promotion is clear, fair, and not misleading.

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

(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;

### Unfair business practices

#### **CONC 4.8.2 R 01/01/2014**

A firm must not unfairly encourage, incentivise or induce a customer to enter into a regulated credit agreement quickly without allowing the customer time to consider the pre-contract information under section 55 of the CCA and the explanations provided under CONC 4.2.5 R.

### General requirements

#### **CONC 3.3.4 G 02/11/2015**

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

#### **CONC 3.3.7 G 01/04/2014**

When communicating information, a firm should consider whether omission of any relevant fact will result in information given to the customer being insufficient, unclear, unfair or misleading.

#### **Risk warnings**

#### **CONC 3.4.1 R 02/11/2015**

(1) A firm must not communicate or approve for communication a financial promotion in relation to high-cost short-term credit, unless it contains the following risk warning: "Warning: Late repayment can cause you serious money problems. For help, go to [moneyadvice.service.org.uk](http://moneyadvice.service.org.uk)".

#### **Content of financial promotions**

#### **CONC 3.5.3 R 31/05/2016**

(1) Where a financial promotion 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:

(a) include a representative example in accordance with CONC 3.5.5 R,

#### **General principles**

#### **CONC 2.2.2 G 21/03/2016**

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

- (1) targeting customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason;
- (2) subjecting customers to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion;

## Representative example

### **CONC 3.5.5 R 02/11/2018**

(1) The representative example in [CONC 3.5.3R \(1\)](#) must comprise the following items of information:

- (a) the rate of interest, and whether it is fixed or variable or both, expressed as a fixed or variable percentage applied on an annual basis to the amount of [credit](#) drawn down;
- (d) the [representative APR](#);

## Other financial promotions requiring a representative APR

### **CONC 3.5.7 R 31/5/2016**

- (1) A [financial promotion](#) must include the [representative APR](#) if it:
  - (c) includes an incentive to apply for [credit](#) or to enter into an agreement under which [credit](#) is provided.

## Affordability

### Guidance on financial difficulties

#### CONC 1.3.1 G 01/01/2014

In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:

- (1) consecutively failing to meet minimum repayments in relation to a credit card or store card;
- (2) adverse accurate entries on a credit file, which are not in dispute;
- (3) outstanding county court judgments for non-payment of debt;
- (4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;
- (5) consecutively failing to meet repayments when due;

### Creditworthiness assessment

#### CONC 5.2A.4 R 01/11/2018

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

- (1) entering into a regulated credit agreement; or
- (2) significantly increasing the amount of credit provided under a regulated credit agreement; or

#### CONC 5.2A.6 G 01/11/2018

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

#### CONC 5.2A.7 R 01/11/2018

A firm must base its creditworthiness assessment on sufficient information:

(1) of which it is aware at the time the creditworthiness assessment is carried out;  
(2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and the information must enable the firm to carry out a reasonable creditworthiness assessment.

### Rules on refinancing: general

#### **CONC 6.7.18 R 01/04/2014**

A firm must not encourage a customer to refinance a regulated credit agreement if the result would be the customer's commitments are not sustainable.

#### **CONC 6.7.19 R 01/04/2014**

A firm must not refinance a customer's existing credit with the firm (other than by exercising forbearance), unless:  
(2) the firm reasonably believes that it is not against the customer's best interests to do so.

### Rules on refinancing: high-cost short-term credit

#### **CONC 6.7.21 G 01/04/2014 HCSTC**

A firm should not refinance high-cost short-term credit where to do so is unsustainable or otherwise harmful.

#### **CONC 6.7.22 G 01/04/2014 HCSTC**

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable.

### The subject matter of the creditworthiness assessment

#### **CONC 5.2A.10 R 01/11/2018**

The firm must consider:

- (1) the risk that the customer will not make repayments under the agreement by their due dates (this is sometimes referred to as credit risk); and
- (2) the risk to the customer of not being able to make repayments under the agreement in accordance with CONC 5.2A.12R (referred to as 'affordability risk' in this section).

### **CONC 5.2A.12 R 01/11/2018**

The *firm* must consider the *customer's* ability to make repayments under the agreement:

- (1) as they fall due over the life of the agreement and, where the agreement is an *open-end agreement*, within a reasonable period;
- (2) out of, or using, one or more of the following:
  - (a) the *customer's* income;
  - (b) income from savings or assets jointly held by the *customer* with another *person*, income received by the *customer* jointly with another *person* or income received by another *person* in so far as it is reasonable to expect such income to be available to the *customer* to make repayments under the agreement; and/or
  - (c) savings or other assets where the *customer* has indicated clearly an intention to repay (wholly or partly) using them;
- (3) without the *customer* having to borrow to meet the repayments;
- (4) without failing to make any other payment the *customer* has a contractual or statutory obligation to make; and
- (5) without the repayments having a significant adverse impact on the *customer's* financial situation.

### **CONC 5.2A.14 R 01/11/2018**

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

### **The customer's income and expenditure**

#### **CONC 5.2A.15 R 01/11/2018**

- (2) The *firm* must take reasonable steps to determine the amount, or make a reasonable estimate, of the *customer's* current income.
  - (3) Where it is reasonably foreseeable that there is likely to be a reduction in the *customer's* income:
    - (a) during the term of the agreement; or
    - (b) in the case of an *open-end agreement*, during the likely duration of the *credit* (see *CONC 5.2A.26R*),



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

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

#### **CONC 5.2A.16 G 01/11/2018**

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

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

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

#### **CONC 5.2A.17 R 01/11/2018**

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

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

(a) during the term of the agreement; or

(b) in the case of an open-end agreement, during the likely duration of the credit (see CONC 5.2A.26R), which could have a material impact on affordability risk, the firm must take reasonable steps to estimate the amount of that increase.

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

#### **CONC 5.2A.18 G 01/11/2018**

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

only a share or a part of a payment required pursuant to a contractual or statutory obligation then the *firm* may, in appropriate cases, take this into account.

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

## Scope, extent and proportionality of assessment

### **CONC 5.2A.20 R 01/11/2018**

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

(2) The *firm* must consider:

- (a) the types of information to use in the *creditworthiness assessment*;
- (b) the content and level of detail of the information to use;
- (c) whether the information in the *firm's* possession is sufficient;
- (d) whether and to what extent to obtain additional information from the *customer*;
- (e) whether and to what extent to obtain information from a *credit reference agency*;
- (f) any other sources of information to use;
- (g) whether and to what extent to verify the accuracy of the information that is used;
- (h) the degree of evaluation and analysis of the information that is used; and
- (i) the steps to take to determine or estimate the *customer's* income or non-discretionary expenditure (where such a determination or estimate is required),

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

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

- (a) the type of *credit*;
- (b) the amount of the *credit* or, where applicable, the *credit limit*;
- (c) the duration (or likely duration) of the *credit*;
- (d) the frequency of the repayments;
- (e) the amounts of the repayments;

- (f) the *total amount payable*;
- (g) the *total charge for credit*;
- (h) the *annual percentage rate of charge*;
- (i) whether the rate of interest or any other charge (except any charge for non-compliance with the agreement or any charge payable by the *customer* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates) is fixed or variable;
- (j) any other costs which will or may be payable by or on behalf of the *customer* in connection with the agreement, including any charge for non-compliance with the agreement but excluding any charge payable by the *customer* under a *hire-purchase agreement* in respect of an exercise of an option to purchase the *goods* to which the agreement relates; and
- (k) any other potential adverse consequences for the *customer* arising under the agreement from a failure to make a repayment by the due date.

#### **CONC 5.2A.23 G 01/11/2018**

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

#### **CONC 5.2A.24 G 01/11/2018**

- (1) The volume and content of the information that must be taken into account, and the steps that must be taken (if any) to evaluate that information and confirm its validity, will depend on the level of affordability risk arising out of the agreement.
- (2) Factors that will affect that level of risk include the actual or potential cost of the *credit* and the *total amount payable* in absolute terms and relative to the *customer's* financial circumstances, where known. So, if, for example, all other things being equal, the amounts of the repayments and the *total charge for credit* are low, the amount of information that is sufficient to support a reasonable *creditworthiness assessment* may be less than would be required:
  - (a) in the case of more expensive *credit* or *credit* that is higher in amount; or
  - (b) where it is known that the *customer's* financial situation is such that the *credit* may be expected to have a more significant impact

### **CONC 5.2A.25 G 01/11/2018**

- (1) In relation to CONC 5.2A.24G(1), potential indicators that the level of affordability risk arising out of the agreement may be high include circumstances where:
- (a) the total value of the customer's outstanding debts relative to the customer's income is high; or
  - (b) there is a high likelihood that the customer will not make repayments under the agreement by their due dates.
- (2) In relation to CONC 5.2A.25G(1)(b), it may be the case that a high risk that one repayment will be missed or will be late is, in the individual circumstances, indicative that the level of affordability risk arising out of the agreement is high.

### Creditworthiness assessment where there is a guarantor

### **CONC 5.2A.32 G 01/11/2018**

- (1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the borrower, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.
- (2) If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last assessment under CONC 5.2A.31R(2), a cumulative increase that is significant, then a further assessment of the guarantor is required.

### Policies and procedures for creditworthiness assessment

### **CONC 5.2A.33 R 01/11/2018**

A firm must:

- (1) establish, implement and maintain clear and effective policies and procedures:
- (a) to enable it to carry out creditworthiness assessments or assessments under CONC 5.2A.31R(2); and
  - (b) setting out the principal factors it will take into account in carrying out creditworthiness assessments or assessments under CONC 5.2A.31R(2);
- (2) Set out the policies and procedures in (1) in writing, and (other than in the case of a sole trader) have them approved by its governing body or senior personnel;
- (3) assess and periodically review:
- (a) the effectiveness of the policies and procedures in (1); and
  - (b) the firm's compliance with those policies and procedures and with its obligations under CONC 5.2A;

- (4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;
- (5) maintain a record, on paper or in electronic form, of each transaction where a *regulated credit agreement* is entered into, or where there is a significant increase in the amount of *credit* provided under a *regulated credit agreement* or a *credit limit* for *running-account credit* under a *regulated credit agreement*, sufficient to demonstrate that:
- (a) a *creditworthiness assessment* or an assessment under *CONC 5.2A.31R(2)* was carried out where required; and
  - (b) the *creditworthiness assessment* or the assessment under *CONC 5.2A.31R(2)* was reasonable and was undertaken in accordance with *CONC 5.2A*,
- and so to enable the *FCA* to monitor the *firm's* compliance with its obligations under *CONC 5.2A*; and
- (6) (other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

## Provision of information

### Adequate explanations in relation to particular regulated credit agreements

#### **CONC 4.2.15 R 12/09/2019**

The following information must be provided by the *lender* or a *credit broker* as part of, and in addition to that provided under, the adequate explanation required by [CONC 4.2.5 R](#), where applicable, in the specified cases:

(3) for *home credit loan agreements* and *high-cost short-term credit*, the effect of refinancing (within the meaning in [CONC 6.7.17 R](#)) or otherwise extending the duration of the *credit* or of the *credit agreement*;

(3A) for a *home credit loan agreement* that would refinance an existing *home credit loan agreement* and also involve an increase in the amount of principal outstanding, and where an alternative option could be entering into a separate *home credit loan agreement* with the *lender* for the amount of the additional principal, the information must include an explanation of the difference, if any, between the weekly amount payable and the *total amount repayable* for a refinanced loan as compared to the situation where the *borrower* enters into a separate, concurrent loan. If the regular period after which the next payment is due is not weekly but a different period, then the *lender* must refer to that other period.

#### **CONC 4.2.16 G 19/03/2019**

(2) The explanation in [CONC 4.2.15R\(3A\)](#) should enable a *customer* to easily understand the different costs of refinancing as opposed to keeping the existing loan and taking out an additional concurrent loan, for example by indicating whether the periodic instalments and/or the total amounts payable are higher or lower.

## Early Settlement

### Consumer Credit Act 1974

#### Section 94 Right to complete payments ahead of time.

(1) The debtor under a regulated consumer credit agreement is entitled at any time, by notice to the creditor and the payment to the creditor of all amounts payable by the debtor to him under the agreement and any amount which the creditor claims under section 95A(2) or section 95B(2) (less any rebate allowable under section 95), to discharge the debtor's indebtedness under the agreement.

(2) A notice under subsection (1) may embody the exercise by the debtor of any option to purchase goods conferred on him by the agreement, and deal with any other matter arising on, or in relation to, the termination of the agreement.

(3) The debtor under a regulated consumer credit agreement, other than an agreement secured on land, is entitled at any time to discharge part of his indebtedness by taking the steps in subsection (4).

(4) The steps referred to in subsection (3) are as follows—

(a) he provides notice to the creditor,

(b) he pays to the creditor some of the amount payable by him to the creditor under the agreement before the time fixed by the agreement, and

(c) he makes the payment—

(i) before the end of the period of 28 days beginning with the day following that on which notice under paragraph (a) was received by the creditor, or

(ii) on or before any later date specified in the notice.

(5) Where a debtor takes the steps in subsection (4) his indebtedness shall be discharged by an amount equal to the sum of the amount paid and any rebate allowable under section 95 less any amount which the creditor claims under section 95A(2) or section 95B(2).

(6) A notice—

(a) under subsection (1), other than a notice relating to a regulated consumer credit agreement secured on land, or

(b) under subsection (4)(a),

need not be in writing.

## Section 95 Rebate on early settlement.

(1) Regulations may provide for the allowance of a rebate of charges for credit to the debtor under a regulated consumer credit agreement where, under section 94, on refinancing, on breach of the agreement, or for any other reason, his indebtedness is discharged or is discharged in part or becomes payable before the time fixed by the agreement, or any sum becomes payable by him before the time so fixed.

(2) Regulations under subsection (1) may provide for calculation of the rebate by reference to any sums paid or payable by the debtor or his relative under or in connection with the agreement (whether to the creditor or some other person), including sums under linked transactions and other items in the total charge for credit.

## The Consumer Credit (Early Settlement) Regulations 2004

### Entitlement to rebate

2.—(1) Subject to the following provisions of this regulation, the creditor shall allow to the debtor under a regulated consumer credit agreement a rebate at least equal to that calculated in accordance with the following provisions of these Regulations whenever early settlement takes place, that is to say whenever, under section 94 of the Act, on refinancing, on breach of the agreement or for any other reason, the indebtedness of the debtor is discharged or becomes payable before the time fixed by the agreement, or any sum becomes payable by him before the time so fixed.

Calculation of the amount of rebate

4.—(1) The amount of the rebate is the difference between the total amount of the repayments of credit that would fall due for payment after the settlement date if early settlement did not take place and the amount given by the following formula—

$$\sum_{i=1}^m A_i(1+r)^{a_i} \quad \text{minus} \quad \sum_{j=1}^n B_j(1+r)^{b_j}$$

where:

$A_i$  = the amount of the  $i$ th advance of credit

$B_j$  = the amount of the  $j$ th repayment of credit

$r$  = the periodic rate equivalent of the APR/100

$m$  = the number of advances of credit made before the settlement date

$n$  = the number of repayments of credit made before the settlement date



$a_i$  = the time between the  $i$ th advance of credit and the settlement date, expressed in periods  
 $b_j$  = the time between the  $j$ th repayment of credit and the settlement date, expressed in periods, and  $\Sigma$  represents the sum of all the terms indicated

(2) In calculating the rebate, where the creditor so elects, any repayment of credit made at a time or a rate other than that provided for in the agreement shall be taken to have been made at the time or rate provided for.

Settlement date

5. The settlement date for calculation of the rebate shall be taken to be—

(a) where the debtor has given notice under section 94 of the Act with a view to discharging his indebtedness under the agreement, the date falling 28 days after the date on which the notice was received by the creditor, or any later date specified as the date of early settlement in the notice, if the debtor pays the amount in question (less any rebate allowable under these Regulations) not later than that date;

(b) the date specified as the date for payment of any sum by the debtor involving early settlement in any notice served under section 76(1) of the Act, any default notice or any notice served under section 98(1), if the debtor pays the amount in question (less any rebate allowable under these Regulations) not later than that date;

(c) in any other case, the date on which the debtor pays any sum involving early settlement.

Deferment of settlement date

6. Where the agreement provides for the credit to be repaid over, or at the end of, a period which is more than a year after the relevant date, the settlement date for calculation of the rebate may be deferred by—

(a) one month, or

(b) where the length of a month's deferment would be more or less than 30 days and the creditor so elects, 30 days.

## THE HOME CREDIT MARKET INVESTIGATION ORDER 2007

### PART 5 Early settlement rebates

#### 24. Interpretation of Part 5

In this Part, 'early settlement' and 'rebate' have the same meanings as in the Consumer Credit (Early Settlement) Regulations 2004.

#### 25. Amount of rebate

(1) A person shall not, as a creditor, enter into a home credit loan agreement unless it contains an express provision giving the debtor the right, in the event of early settlement, to a rebate that would in all circumstances be equal to or greater than the amount determined in accordance with paragraph (2).

(2) The amount determined in accordance with this paragraph is the rebate the debtor would be entitled to under the Consumer Credit (Early Settlement) Regulations 2004 if—

(a) in regulation 4(2), the words 'where the creditor so elects' were omitted;

(b) in regulation 5(a), for '28 days' there were substituted '13 days'; and

(c) regulation 6 (deferment of settlement date) were omitted.

(3) For the purposes of this article, an agreement embodies a provision if the provision is set out either in the agreement or in another document referred to in it.

(4) Paragraph (1) shall not apply to an agreement entered into during the period of three months beginning with the date of this Order.