

Overdraft repeat use

## Chapter 5D

Overdraft repeat use

## 5D.1 Purpose and application

### Purpose

- 5D.1.1 **R** (1) In this chapter, “repeat use” refers to a pattern of overdraft use where the frequency and depth of use may result in high cumulative charges that are harmful to the *customer* or indicate that the *customer* is experiencing or at risk of financial difficulties.
- (2) The expressions “arranged overdraft”, “excluded account”, “personal current account”, “private bank” and “unarranged overdraft” have the same meaning as set out at ■ CONC 5C.

- 5D.1.2 **G** The purpose of this chapter is to require *firms* to:
- (1) monitor *customers’* patterns of overdraft use;
  - (2) identify *customers* with patterns of repeat use; and
  - (3) take appropriate steps with the aim of changing such patterns of use.

### Who and what?

- 5D.1.3 **R** (1) Subject to (2), this chapter applies to a *firm* with respect to *consumer credit lending* and connected activities in relation to arranged overdrafts and unarranged overdrafts associated with personal current accounts.
- (2) This chapter does not apply to:
- (a) a *firm* if all personal current accounts provided or offered by the *firm* are excluded accounts;
  - (b) a *firm* in respect of any personal current account which may be used for a currency other than a currency of the *United Kingdom*;
  - (c) a private bank; or
  - (d) a *credit union*.

### Where?

- 5D.1.4 **R** This chapter applies to a *firm* with respect to activities carried on from an establishment maintained by it in the *United Kingdom*.

## 5D.2 Obligation to identify and monitor repeat use of overdrafts

- 5D.2.1** **R** A *firm* must establish, implement and maintain clear and effective policies, procedures and systems to:
- (1) monitor and review periodically the pattern of drawings and repayments of each of its *customers* under an arranged overdraft or an unarranged overdraft, and other relevant information held by the *firm*; and
  - (2) identify, by reference to an appropriate collection of factors, any *customers* in respect of whom there is a pattern of repeat use, and then sub-divide those *customers* into the following two categories:
    - (a) *customers* in respect of whom there are signs of actual or potential financial difficulties;
    - (b) all other *customers* who show a pattern of repeat use (that is, all *customers* within ■ CONC 5D.2.1R(2) who are not in category (a)).
- 5D.2.2** **R** The rules in ■ CONC 5D.2.1R(1) and (2) do not apply where the *firm* is already in the process of intervening in respect of the *customer's* overdraft use in accordance with ■ CONC 5D.3.
- 5D.2.3** **G**
- (1) The policies, procedures and systems referred to in ■ CONC 5D.2.1R should, having regard to the nature, scale and complexity of the *firms' consumer credit lending* activity in relation to overdrafts, enable the *firm*, at regular intervals, to pro-actively look back over an appropriate period at patterns of overdraft use.
  - (2) A *firm* may decide the frequency with which it reviews previous overdraft use, and the length of the preceding period of overdraft use that it considers when doing so, provided that the *firm* can demonstrate that its policies, procedures and systems are effective in promptly identifying *customers* who are within ■ CONC 5D.2.1R(2)(a) or (b).
  - (3) ■ CONC 5D.2.1R does not specify the frequency, duration or amount of drawings that may constitute repeat use. *Firms* have discretion, therefore, to tailor the policies, procedures and systems required by ■ CONC 5D.2.1R to their specific business circumstances. If a *customer* has become or remained overdrawn in every *month* over the preceding 12-*month* period, it is likely that the *customer* will be within ■ CONC 5D.2.1R(2)(a) or (b). It is also likely, however, that there will be other patterns of drawings in fewer numbers of *months* that

are caught by ■ CONC 5D.2.1R(2)(a) or (b). There need not necessarily be drawings under an overdraft in consecutive *months* in order for use to be properly treated as repeat use. Conversely, there may be small and temporary drawings, even in consecutive *months*, that are neither indicative of actual or potential financial difficulties nor the cause of high cumulative charges.

- (4) When determining whether there is a high cumulative charge for overdraft use which may be harmful, the *firm* should consider the total amount of the combined charges both in absolute terms and relative to the *customer's* financial circumstances, where known.
- (5) Where there is a pattern of repeat use of an overdraft associated with a personal current account, features of that use and other factors which may be a sign of actual or potential financial difficulties include:
  - (a) one or more of the matters set out in ■ CONC 1.3.1G(1) to (7) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
  - (b) an upward trend in a *customer's* use of the overdraft over time, having regard to one or both of the following:
    - (i) the number of *days* of use per *month*; and
    - (ii) the value of the *customer's* borrowing.
  - (c) changes to the regular credits or debits to the personal current account, which may indicate a fall in disposable income or increased expenditure;
  - (d) use of other products which may indicate a fall in disposable income or growing indebtedness (for example, a reduction in the balance of a savings account, or an increase in the outstanding balance on another *credit* product) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
  - (e) the use of an unarranged overdraft associated with the personal current account, especially if becoming larger, more sustained or more frequent over time;
  - (f) the incidence of refused payments in relation to the personal current account, especially if there is a rise in the number or frequency of refused payments over time;
  - (g) information provided by the *customer* that indicates the *customer* is in, or is likely to experience, financial difficulties.
- (6) A *customer* may in fact be in actual or potential financial difficulties even if none of the factors described above is present, so the *customer's* response to the *firm's* initial intervention will be important for determining the appropriate next steps.
- (7) When a *firm* is first implementing policies, procedures and systems to identify *customers* in respect of whom there is a pattern of repeat use, the *firm* should give priority to identifying those *customers* who are vulnerable and experiencing, or at risk of, financial difficulties, in circumstances where prioritisation is appropriate in the light of the scale and complexity of the *firm's* consumer credit lending activity in relation to overdrafts.

## 5D.3 Interventions to be taken in the case of repeat users

### 5D.3.1

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- (1) This *rule* applies where a *firm*:
  - (a) identifies that a *customer* has a pattern of repeat use within the meaning of ■ CONC 5D.2.1R(2)(b);
  - (b) assesses that the *customer* is likely to continue that pattern of use; and
  - (c) does not consider, acting reasonably, that the *customer* is one in respect of whom there are signs of actual or potential financial difficulties.
- (2) The *firm* must communicate with the *customer* (“the first communication”) in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) highlighting the *customer’s* pattern of overdraft use and indicating that the *customer* should consider whether it is resulting or may result in high avoidable costs.
- (3) The *firm* must continue to monitor and review the *customer’s* pattern of overdraft use after the first communication, and if after a reasonable period the pattern of use continues to be within ■ CONC 5D.2.1R(2)(b), the *firm* must further communicate with the *customer* (“the second communication”), reminding the *customer* of the content of the first communication or reiterating that content.
- (4) The *firm* must continue to monitor and review the *customer’s* pattern of overdraft use after the second communication, and if the pattern of use continues to be within ■ CONC 5D.2.1R(2)(b), the *firm* must continue to communicate with the *customer* in similar terms or for a similar purpose at least annually until such time as the pattern of use ceases to be within ■ CONC 5D.2.1R(2)(b).

### 5D.3.2

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- (1) This *rule* applies where a *firm* identifies that a *customer*:
  - (a) has a pattern of repeat use within the meaning of ■ CONC 5D.2.1R(2)(a); and
  - (b) is one in respect of whom there are signs of actual or potential financial difficulties.
- (2) The *firm* must communicate with the *customer* in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and

the *customer*) highlighting the *customer's* pattern of overdraft use and indicating that the *customer* should consider whether it is resulting or may result in high avoidable costs. The *firm* must encourage the *customer* to contact the *firm* to discuss their situation and explain that doing nothing could make things worse. The *firm* must also provide contact details for *not-for-profit debt advice bodies*.

- (3) If after a reasonable period the *customer* has not contacted the *firm* and the *customer's* pattern of use continues to be within ■ CONC 5D.3.2R(1), the *firm* must take reasonable steps to contact the *customer* to discuss their situation.
- (4) In discussions under (2) or (3) (which need not be on a single occasion), the *firm* must seek to explore the reasons for the *customer's* pattern of overdraft use, as well as the reasons for the *customer's* actual or potential financial difficulties, and what (if anything) the *customer* is doing, or intends to do, to address those issues.
- (5) If appropriate, in the light of the information gathered under (4), the *firm* must:
  - (a) identify and set out suitable options designed to help the *customer*:
    - (i) to reduce their overdraft use over a reasonable period of time; and
    - (ii) to address their actual or potential financial difficulties, in such a way that does not adversely affect the *customer's* financial situation; and
  - (b) explain that, if the *customer* fails to engage in the discussion or fails to take appropriate action to address the situation, one of the possible consequences is that the *firm* may need to consider the suspension or removal of the overdraft facility or a reduction in the credit limit.
- (6) If the *customer* declines to contact the *firm* in response to the communication in (2) and to respond to attempts by the *firm* to contact them under (3), or to take reasonable steps to take forward an appropriate option under (5) or to otherwise address the situation, the *firm* must after a reasonable period consider whether to continue to offer the overdraft facility and whether to reduce the credit limit.
- (7) Sub-paragraph (6) does not apply if the suspension or removal of the overdraft facility or a reduction in the credit limit would cause financial hardship to the *customer*.

## 5D.3.3

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- (1) The purpose of ■ CONC 5D.3 is to require a *firm* to intervene in an appropriate and proportionate manner where it detects repeat use of an overdraft with the aim of reducing that use and improving the *customer's* financial situation. A *firm* should keep in mind, when doing so, the principle that an overdraft is not generally suitable for long-term use that results in a high total cost burden, as well as the need to pay due regard to the interests of its *customers* and treat them fairly in accordance with *Principle 6*.

- (2) ■ CONC 5D.3 does not specify a particular form of words to be used in communications with repeat overdraft users, and *firms* have discretion to tailor the language and tone of those communications to the circumstances of the individual *customer*.
- (3) For the purposes of ■ CONC 5D.3.2R(3), “reasonable period” is unlikely to be longer than one *month*.
- (4) Options that a *firm* could identify for the purposes of ■ CONC 5D.3.2R(5)(a) may include, where assessed as appropriate for the *customer*:
  - (a) advice on budgeting and money management, for example adjusting payment dates or setting up alerts;
  - (b) providing contact details for *not-for-profit debt advice bodies* and other relevant bodies (for example, one providing advice on budgeting or money management), and encouraging the *customer* to contact one of them;
  - (c) the provision by the *firm* to the *customer* of alternative *credit* on more favourable terms (for example a fixed-sum loan repayable by instalments), provided that, if this would be accompanied by suspension or removal of an existing *credit* facility, this would not cause financial hardship to the *customer*;
  - (d) forbearance, such as reducing or waiving interest and other charges or (where applicable) allowing additional time to pay, where this does not unduly delay further help to the *customer* or permit further deterioration of the *customer's* financial position; or
  - (e) a reduction in the credit limit or the suspension or removal of the overdraft facility (or reminding the *customer* that they can ask the *firm* to take these steps) provided that such reduction, suspension or removal would not cause financial hardship to the *customer*.
- (5)
  - (a) If an overdraft *customer* has already been identified by a *firm* as being in financial difficulties, and is already being treated with appropriate forbearance by the *firm*, the *rules* in this section do not require the *firm* to do anything which is inconsistent with the treatment that it has already adopted in respect of that *customer*.
  - (b) Where a *Debt Respite moratorium* is in effect for a *customer's* overdraft and a *firm* is complying with its obligations pursuant to that moratorium, the *firm* is treating the *customer* with appropriate forbearance with respect to the portion of the overdraft that is subject to the moratorium. The *firm* is not required to take the steps in relation to that *moratorium debt* under this section during the moratorium, as these steps would be inconsistent with the treatment currently being adopted in respect of that *customer*.
- (6) *Firms* are reminded that they should not consider the suspension or removal of the overdraft facility, or a reduction in the credit limit, under ■ CONC 5D.3.2R(6) if this would cause financial hardship to a *customer* (■ CONC 5D.3.2R(7)). A *firm* should give careful thought to the potential effect of suspension, removal or reduction on the *customer* and consider these steps as part of a response to repeat use

only where the *firm* is confident, on the basis of sufficient information and enquiry, that they would not cause financial hardship in the individual circumstances of the case.

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### 5D.4 Monitoring repeat use strategies

**5D.4.1** **R** A *firm* must monitor and periodically review the effectiveness of its policies, procedures and systems under ■ CONC 5D.2.1R, and update or adjust them as appropriate.

**5D.4.2** **G** In assessing and periodically reviewing the effectiveness of its policies, procedures and systems under ■ CONC 5D.2.1R, a *firm* should have regard, amongst other matters, to the number of repeat users and size of their overdraft balances before putting in place the procedures required by these *rules*, compared with the number and size following implementation of those procedures. More generally, a *firm* should assess the extent to which it has been able to assist those *customers* who were showing a pattern of repeat use and who could benefit from assistance.

## 5D.5.1

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 5D.5 Reporting on repeat use of overdrafts

- (1) A *firm* must submit a document to the *FCA* by electronic mail to [overdrafts@fca.org.uk](mailto:overdrafts@fca.org.uk), containing a detailed description of the policies, procedures and systems it establishes to comply with:
  - (a) ■ CONC 5D.2.1R;
  - (b) ■ CONC 5D.3.2R; and
  - (c) ■ CONC 5D.4.1Rno later than the date on which the *firm* becomes subject to ■ CONC 5D.
- (2) A *firm* must prepare two reports for the *FCA* describing the results of the monitoring required by ■ CONC 5D.4.1R. The first report must be in respect of the *six-month* reporting period beginning on the date on which the *firm* becomes subject to ■ CONC 5D. The second report must be in respect of the *six-month* reporting period that begins immediately after the end of the reporting period covered by the first report. Each report must be submitted to the *FCA* by electronic mail to [overdrafts@fca.org.uk](mailto:overdrafts@fca.org.uk) within one *month* following the end of the relevant *six-month* reporting period and must include the following information:
  - (a) the number of repeat users and total size of their overdraft balances at the start of the reporting period;
  - (b) the number of repeat users and total size of their overdraft balances at the end of the reporting period; and
  - (c) any explanation, commentary or background on the figures in (a) and (b).
- (3) Where a *firm* proposes to update its policies, procedures and systems, it must submit a report to the *FCA* containing a description of any substantial changes.