

## Chapter 7

# Arrears, default and recovery (including repossessions)

## 7.1 Application

### Who? What?

7.1.1

**R**

This chapter applies, unless otherwise stated in or in relation to a *rule*, to:

- (1) a *firm* with respect to *consumer credit lending*;
- (2) a *firm* with respect to *consumer hiring*;
- (3) a *firm* with respect to *operating an electronic system in relation to lending*, in relation to a *borrower* under a *P2P agreement*;
- (4) a *firm* with respect to *debt collecting*.

7.1.2

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The following sections provide otherwise for application:

- (1) ■ CONC 7.12 (lenders' responsibilities in relation to debt) applies only to *firms* in respect of *consumer credit lending*;
- (2) ■ CONC 7.17 to ■ CONC 7.19 apply only to *firms operating electronic systems in relation to lending* in relation to *borrowers* under *P2P agreements* as set out in those sections.

7.1.3

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- (1) In accordance with ■ CONC 1.2.2 R *firms* must ensure that their employees and agents comply with *CONC* and must take reasonable steps to ensure that other *persons* acting on the *firm's* behalf act in accordance with *CONC*.
- (2) The *rule* in ■ CONC 1.2.2 R is particularly important in relation to the requirements in ■ CONC 7, for example, in dealing with an *individual* from whom the *person* referred to in the *rule* is seeking to collect a debt.
- (3) In this chapter the expression "arrears" includes any shortfall in one or more payment due from a *customer* under an agreement to which the chapter applies.

### Agreements where there is a guarantor etc

7.1.4

**R**

- (1) In this chapter, except for ■ CONC 7.6.15AG:
  - (a) a reference to a *borrower*, a *customer* or a *hirer* includes a reference to an *individual* other than the *borrower* or the *hirer*

(in this chapter, referred to as “the guarantor”) who has provided a guarantee or an indemnity (or both) in relation to:

- (i) a *regulated credit agreement*; or
- (ii) a *regulated consumer hire agreement*; or
- (iii) a *P2P agreement* in respect of which the *borrower* is an *individual*;

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

- (b) a reference (other than in this *rule*) to a *credit agreement*, a *consumer hire agreement* or a *P2P agreement* includes a reference to the document that includes the guarantee or the indemnity (or both);
  - (c) a reference to a *repayment* includes a reference to a payment due under the guarantee or under the indemnity;
  - (d) a reference to paying or repaying the debt includes a reference to making (in whole or in part) a payment due under the guarantee or under the indemnity; and
  - (e) a reference to the adequate explanation required by ■ CONC 4.6.2R includes a reference to the adequate explanation required by ■ CONC 4.6.5R.
- (2) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.
- (3) This *rule* does not apply to ■ CONC 7.3.1G, ■ CONC 7.4.1R, ■ CONC 7.4.2R, ■ CONC 7.5.1G, ■ CONC 7.6.2AR, ■ CONC 7.6.2BG, ■ CONC 7.15.3G, ■ CONC 7.15.4R, ■ CONC 7.15.5G, or ■ CONC 7.17 to ■ CONC 7.19.

7.1.5

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



## 7.2 Clear effective and appropriate arrears policies and procedures

### Arrears policies

7.2.1 **R** A *firm* must establish and implement clear, effective and appropriate policies and procedures for:

- (1) dealing with *customers* whose accounts fall into arrears;

[Note: paragraph 7.2 of *ILG*]

- (2) the fair and appropriate treatment of *customers*, who the *firm* understands or reasonably suspects to be particularly vulnerable.

[Note: paragraphs 7.2 and 7.2(box) of *ILG* and 2.2 (box) of *DCG*]

7.2.2 **G** *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.

[Note: paragraph 2.2 (box) of *DCG*]

7.2.3 **G** In developing procedures and policies for dealing with *customers* who may not have the mental capacity to make financial decisions, *firms* may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines "Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt".

[Note: paragraph 3.7r (box) of *DCG*]



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

7.3.1

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(1) In relation to *debt collecting* and *debt administration*, the definition of *customer* refers to an *individual* from whom the payment of a debt is sought; this would include where a *firm* mistakenly treats an *individual* as the *borrower* under an agreement and mistakenly or wrongly pursues the *individual* for a debt.

[Note: paragraph 1.12 of DCG]

(2) In relation to *debt collecting* and *debt administration*, the definitions of *customer* and *borrower* are given extended meanings to include, as well as those other people they generally include, a *person* providing a guarantee or indemnity under a *credit agreement* and also a *person* to whom rights and duties under the agreement are passed by assignment or operation of law. This reflects article 39M of the *Regulated Activities Order*.

**Dealing fairly with customers in arrears or default**

7.3.2

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When dealing with *customers* in default or in arrears difficulties a *firm* should pay due regard to its obligations under *Principle 6* (Customers' interests) to treat its *customers* fairly.

[Note: paragraphs 7.12 of ILG and 2.2 of DCG]

**Forbearance and due consideration**

7.3.3

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Where a *customer* under a *regulated credit agreement* fails to make an occasional payment when it becomes due, a *firm* should, in accordance with *Principle 6*, allow for such unmade payments to be made within the original term of the agreement unless:

(1) the *firm* reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the *total amount payable* to be *unsustainable* or otherwise cause a *customer* to be in financial difficulties; or

[Note: paragraph 4.7 of ILG]

(2) the *firm* reasonably believes that terminating the agreement will mitigate such adverse consequences for the *customer* and before terminating the agreement it explains this to the *customer*.

- 7.3.4** **R** A *firm* must treat *customers* in default or in arrears difficulties with forbearance and due consideration.
- [Note: paragraphs 7.3 and 7.4 of *ILG* and 2.2 of *DCG*]
- 7.3.5** **G** Examples of treating a *customer* with forbearance would include the *firm* doing one or more of the following, as may be relevant in the circumstances:
- (1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a *customer* provides evidence of financial difficulties and is unable to meet *repayments* as they fall due or is only able to make token *repayments*, where in either case the level of debt would continue to rise if interest and charges continue to be applied);
- [Note: paragraph 7.4 (box) of *ILG*]
- (2) allowing deferment of payment of arrears:
    - (a) where immediate payment of arrears may increase the *customer's repayments* to an *unsustainable* level; or
    - (b) provided that doing so does not make the term for the *repayments* unreasonably excessive;
  - (3) accepting token payments for a reasonable period of time in order to allow a *customer* to recover from an unexpected income shock, from a *customer* who demonstrates that meeting the *customer's* existing debts would mean not being able to meet the *customer's* priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).
- 7.3.6** **G** Where a *customer* is in default or in arrears difficulties, a *firm* should allow the *customer* reasonable time and opportunity to repay the debt.
- [Note: paragraph 2.2 of *DCG*]
- 7.3.7** **G** [deleted]
- 7.3.7A** **G**
- (1) If a *customer* is in default or in arrears difficulties, the *firm* should, where appropriate:
    - (a) inform the *customer* that free and impartial debt advice is available from *not-for-profit debt advice bodies*; and
    - (b) refer the *customer* to a *not-for-profit debt advice body*.
  - (2) A *firm* may refer the *customer* to a *not-for-profit debt advice body* by, for example, providing the *customer* with a copy of the current arrears information sheet under section 86 of the CCA, or with the name and contact details of a *not-for-profit debt advice body* or the *Money Advice Service*; or directly transferring the *customer's* call to a *not-for-profit debt advice body*.
  - (3) In addition, the *firm* may provide the *customer* with the name and contact details of another *authorised person* who has *permission* for

*debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.

**7.3.8** **G** An example of where a *firm* is likely to contravene *Principle 6* and **■ CONC 7.3.4 R** is where the *firm* does not allow for alternative, affordable payment amounts to repay the debt due in full, where the *customer* is in default or arrears difficulties and the *customer* makes a reasonable proposal for repaying the debt or a *debt counsellor* or another *person* acting on the *customer's* behalf makes such a proposal.

[Note: paragraphs 7.16 of *ILG* and 3.7j of *DCG*]

**7.3.9** **R** A *firm* must not operate a policy of refusing to negotiate with a *customer* who is developing a repayment plan.

[Note: paragraph 3.9d (box) of *DCG*]

**7.3.10** **R** A *firm* must not pressurise a *customer*:

- (1) to pay a debt in one single or very few *repayments* or in unreasonably large amounts, when to do so would have an adverse impact on the *customer's* financial circumstances;

[Note: paragraph 7.18 of *ILG*]

- (2) to pay a debt within an unreasonably short period of time; or

[Note: paragraphs 3.7i of *DCG* and 7.18 of *ILG*]

- (3) to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.

[Note: paragraph 3.7b of *DCG*]

**7.3.10A** **G** (1) An example of behaviour by or on behalf of a *firm* which is likely to contravene **■ CONC 7.3.10R** and *Principle 6* is pressurising a *customer* to raise funds to repay a debt by arranging the receipt of a lump sum from the *customer's pension scheme*.

- (2) *Firms* are also reminded of **■ PERG 12.6G** which contains *guidance* on the *regulated activity of advising on conversion or transfer of pension benefits*.

**7.3.11** **R** A *firm* must suspend the active pursuit of recovery of a debt from a *customer* for a reasonable period where the *customer* informs the *firm* that a *debt counsellor* or another *person* acting on the *customer's* behalf or the *customer* is developing a repayment plan.

[Note: paragraphs 7.12 of *ILG* and 3.7m of *DCG*]

**7.3.12** **G** A "reasonable period" in **■ CONC 7.3.11 R** should generally be for thirty days where there is evidence of a genuine intention to develop a plan and the

*firm* should consider extending the period for a further thirty days where there is reasonable evidence demonstrating progress to agreeing a plan.

[Note: paragraphs 7.12 (box) *ILG* and 3.7m of *DCG*]

**7.3.13** G A *firm* seeking to recover debts should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

[Note: paragraphs 7.16 (box) of *ILG* and 3.7k of *DCG*]

### Proportionality

**7.3.14** R (1) A *firm* must not take disproportionate action against a customer in arrears or default.

[Note: paragraphs 7.14 (box) of *ILG* and 3.7t of *DCG*]

(2) In accordance with (1) a *firm* must not, in particular, apply to court for an order for sale or submit a bankruptcy petition, without first having fully explored any more proportionate options.

[Note: paragraph 7.14 (box) of *ILG*]

**7.3.15** G A *firm* should not make undue, excessive or otherwise unfair use of statutory demands (within the meaning of section 268 of the Insolvency Act 1986) when seeking to recover a debt from a *customer*.

[Note: paragraphs 7.10 of *ILG* and 3.7n of *DCG*]

### Enforcement of debts

**7.3.16** G A *firm* should not take steps to enforce a debt if it is aware that the *customer* is subject to a bankruptcy order (or in Scotland where sequestration is awarded in relation to the *customer*), a debt relief order or an individual voluntary arrangement (or, in Scotland, a protected trust deed or a Debt Arrangement Scheme).

[Note: paragraph 3.9h of *DCG*]

**7.3.17** R A *firm* must not take steps to repossess a *customer's* home other than as a last resort, having explored all other possible options.

[Note: paragraphs 7.14 of *ILG* and 3.7t of *DCG*]

**7.3.18** R A *firm* must not threaten to commence court action, including an application for a charging order or (in Scotland) an inhibition or an order for sale, in order to pressurise a *customer* in default or arrears difficulties to pay more than they can reasonably afford.

[Note: paragraphs 7.14 of *ILG* and 3.7i (box) of *DCG*]



**7.3.19** **G** *Firms seeking to recover debts under regulated credit agreements secured 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. The aims of the PAP are to ensure that a *firm* and a *customer* act fairly and reasonably with each other in resolving any matter concerning arrears, and to encourage more pre-action contact in an effort to seek agreement between the parties on alternatives to repossession. The Pre-action Protocol on Possession Proceedings applies to all mortgage repossession cases in Northern Ireland. The Home Owner and Debtor Protection (Scotland) Act 2010 provides for pre-action requirements to be placed on secured *lenders* in Scotland.

[Note: paragraphs 7.14 of *ILG* and 3.7s of *DCG*]



## 7.4 Information on status of debts

**7.4.1** **R** A *firm* must provide the *customer* or another *person* acting on behalf of the *customer* with information on the amount of any arrears and the balance owing.

[Note: paragraph 3.3f of DCG]

**7.4.2** **R** Where:

- (1) a *customer* offers a settlement payment lower than the total amount owing; or
- (2) a *lender* under a *regulated credit agreement* or an *owner* under a *regulated consumer hire agreement* decides to stop pursuing a *customer* in respect of a debt arising under the agreement;

and the debt (or part of it) continues to exist notwithstanding the acceptance of the *customer's* offer or the decision to cease to pursue the debt, the *lender* or *owner* must ensure that the continuing existence of the debt and the possibility of the *customer* being pursued by another *firm* who purchases the debt is explained in clear terms to the *customer*.

[Note: paragraph 3.3i of DCG]



## 7.5 Pursuing and recovering repayments

- 7.5.1** **G** (1) Failure to comply with ■ CONC 6.5.2 R, which sets out when a *firm* must give notice to a *customer* where a *regulated credit agreement* has been assigned to a third party, will be taken into account by the *FCA* in taking decisions about a *firm's permission* or about taking other action.
- [Note: paragraph 3.7g of DCG]
- (2) ■ CONC 6.5.2 R makes it clear that where arrangements for servicing the *credit* change at the time of the assignment of a *regulated credit agreement*, notice must be given to the *customer* as soon as reasonably possible. A *firm* should give notice as required under that *rule* in order that any change should not adversely impact on a *customer's* existing repayment arrangements. In addition, if arrangements for servicing the debt otherwise change so far as the *customer* is concerned, the *firm* should notify the *customer* on or before that change.
- [Note: paragraph 3.7h of DCG]
- 7.5.2** **R** A *firm* must not pursue an *individual* whom the *firm* knows or believes might not be the *borrower* or *hirer* under a *credit agreement* or a *consumer hire agreement*.
- [Note: paragraph 3.5f of DCG]
- 7.5.3** **R** A *firm* must not ignore or disregard a *customer's* claim that a debt has been settled or is disputed and must not continue to make demands for payment without providing clear justification and/or evidence as to why the *customer's* claim is not valid.
- [Note: paragraph 3.7o of DCG]
- 7.5.4** **R** A *firm* acting on behalf of a *lender* or *owner* must, unless the *firm* has authority from the *lender* or *owner* to accept such an offer, refer a reasonable offer by the *customer* to pay by instalments to the *lender* or *owner*.
- [Note: paragraph 3.9f of DCG]

**7.5.5** **R** A *firm* acting on behalf of a *lender* or *owner* must pass on payments received from a *customer* and/or details of a *customer's* outstanding balance to the *lender* or *owner* in a timely manner or, provided the effect of the agreement does not impact adversely on the *customer*, in accordance with an agreement between the *firm* and *lender* or *owner* in question

[Note: paragraph 3.9g of DCG]

**7.5.6** **G** A timely manner in **■ CONC 7.5.5 R** would normally be within five *working days* of receipt of payment by the *firm*.

[Note: paragraph 3.9g of DCG]



## 7.6 Exercise of continuous payment authority

### Recovery and continuous payment authorities etc.

7.6.1

**R**

- (1) A *firm* must not exercise its rights under a *continuous payment authority* (or purport to do so):
  - (a) unless it has been explained to the *customer* that the *continuous payment authority* would be used in the way in question; and
  - (b) other than in accordance with the terms specified in the *credit agreement* or the *P2P agreement*.
- (2) If a *firm* wishes a *customer* to change the terms of a *continuous payment authority* it must contact the *customer* and:
  - (a) provide the *customer* with an adequate explanation of the reason for and effect of the proposed change, including any effect it would have on the matters in ■ CONC 4.6.2R (2); and
  - (b) once it has done so, obtain the consent of the *customer*.

[Note: paragraph 3.9mi of DCG]

7.6.2

**G**

A *firm* should not:

- (1) request a *payment service provider* to make a payment from the *customer's* payment account unless:
  - (a) (i) the amount of the payment (or the basis on which payments may be taken) is specified in or permitted by the *credit agreement* or *P2P agreement*; and
  - (ii) the amount of the payment (or the basis on which payments may be taken) was referred to in the adequate explanation required by ■ CONC 4.6.2 R; or
  - (b) the *firm* has complied in relation to such a request with ■ CONC 7.6.1R (2);
- (2) request a *payment service provider* to make a payment to recover default fees or other sums unless:
  - (a) (i) the amount (or the basis on which default fees or other sums may be taken) is specified in the *credit agreement* or *P2P agreement*; and

- (ii) the amount (or the basis on which default fees or other sums may be taken) was referred to in the adequate explanation required by ■ CONC 4.6.2 R; or
  - (b) the *firm* has complied in relation to such a request with ■ CONC 7.6.1R (2);
- (3) other than where ■ CONC 7.6.14R (2) applies, request a *payment service provider* to make a payment from the *customer's* payment account of an amount that is less than the amount due at the time of the request, unless the *firm*:
- (a) (i) is permitted to do so by the *credit agreement* or *P2P agreement*; and
  - (ii) the adequate explanation required by ■ CONC 4.6.2 R indicated that part payment (a sum due which is less than the full sum due at the time the *firm's* payment request is made) could be requested if the full amount was not available and specified the basis on which and the frequency with which such requests for payment could be made and any minimum amount or percentage that would be requested; or
  - (b) the *firm* has complied in relation to such a request with ■ CONC 7.6.1R (2).
- (4) request a *payment service provider* to make a payment from the *customer's* payment account before the due date of payment as specified in the *credit agreement* or *P2P agreement*, unless the *firm* has complied with ■ CONC 7.6.1R (2);
- (5) request a *payment service provider* to make a payment from the *customer's* payment account after the due date on a date, or within a period, or with a frequency other than as specified in the *credit agreement* or *P2P agreement* and referred to in the adequate explanation, unless the *firm* has complied with ■ CONC 7.6.1R (2);
- (6) request a *payment service provider* to make a payment from the payment account of a third party other than as specifically agreed with the third party or agreed with the *customer* following the third party's confirmation to the *firm* that the third party consents to the arrangement.

[Note: paragraph 3.9mi of DCG]

**7.6.2A**

**R**

- (1) This *rule* applies where the terms of a *regulated credit agreement* or a *P2P agreement* do not provide for a *continuous payment authority* and it is proposed that a *customer* will grant a *continuous payment authority* to:
- (a) a *lender* or a person who has *permission* to carry on the activity of *operating an electronic system in relation to lending*; or
  - (b) a *debt collector*, provided that the *debt collector* is acting under an arrangement with the *lender* or the person who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, the effect of which is that a payment by the *customer* to the *debt collector* amounts to a discharge or reduction of the debt due to the *lender*.

- (2) The *firm* which proposes the *continuous payment authority* to the *customer* must, before the *customer* grants the *continuous payment authority*:
  - (a) explain why a *continuous payment authority* is proposed;
  - (b) provide the *customer* with an adequate explanation of the matters in ■ CONC 4.6.2R(2);
  - (c) give the *customer* information, on paper or in another *durable medium*, setting out, in plain and intelligible language, the terms of the *continuous payment authority* and how it will operate; and
  - (d) give the *customer* a reasonable opportunity to consider the explanations required by (a) and (b) and the information required by (c).
- (3) A *firm* must not propose that a *customer* should grant a *continuous payment authority*, and must not exercise rights under such an authority, in respect of *repayments* under a *regulated credit agreement* or a *P2P agreement*, the terms of which do not already provide for a *continuous payment authority*, unless:
  - (a) the *customer* is in arrears or default in respect of the agreement; and
  - (b) a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, or a *debt collector* acting under an arrangement with the *lender* or the *person*, is exercising forbearance in respect of the *customer* in relation to the agreement.

**7.6.2B**

**G**

- (1) Where a *regulated credit agreement* or a *P2P agreement* does not incorporate the terms of a *continuous payment authority*, ■ CONC 7.6.2AR enables a *continuous payment authority* to be put in place (for example, for a repayment plan) without necessarily requiring an amendment to the agreement. But ■ CONC 7.6.2AR applies only where the *customer* is in arrears or default, and the creation of the *continuous payment authority* supports the fair treatment of the *customer* and facilitates the exercise of forbearance (see ■ CONC 7.3.4R and ■ CONC 7.3.5G).
- (2) ■ CONC 7.6.2AR also permits a *continuous payment authority* to be granted to a *debt collector*, provided that the *debt collector* is acting under an arrangement with a *lender* or a *person* who has *permission* to carry on the activity of *operating an electronic system in relation to lending*, such that a payment to the *debt collector* is treated as a payment to the *lender*, and the requirements of ■ CONC 7.6.2AR(3) are met.
- (3) ■ CONC 7.6.2AR is subject to the *rule* in ■ CONC 7.6.12R which restricts *firms* to two requests under a *continuous payment authority* for a sum due for *high-cost short-term credit*.
- (4) Whether a forbearance that involves the creation of a *continuous payment authority* amounts to an agreement that varies or supplements a *regulated credit agreement* (rather than merely an indulgence to the *customer*) will depend on the circumstances. If there is an agreement that varies or supplements a *regulated credit*

*agreement*, section 82(2) of the CCA requires it to be documented as a modifying agreement and ■ CONC 4.6.3R applies instead of ■ CONC 7.6.2AR. *Firms* should note the possibility that a *P2P agreement* may be a *regulated credit agreement*.

**7.6.3** **R** A *firm* must exercise its rights under a *continuous payment authority* in a manner which is reasonable, proportionate and not excessive and must exercise appropriate forbearance if it becomes aware that the *customer* is or may be experiencing financial difficulties.

[Note: paragraph 3.9mii of DCG]

**7.6.4** **G** Whether exercising rights under a *continuous payment authority* is reasonable, proportionate and not excessive (as regards the frequency or period of collection attempts), will depend on the circumstances, including:

- (1) whether the *firm* is aware or has reason to believe that the *customer* is in actual or potential financial difficulties which the exercise of rights under a *continuous payment authority* may exacerbate; and
- (2) whether the *customer* has been notified of the failure to collect the payment and has responded to contact from the *firm*.

[Note: paragraph 3.9mii of DCG]

**7.6.5** **G** A *firm* is likely to contravene ■ CONC 7.6.3 R if it:

- (1) requests a *payment service provider* to make a payment from the *customer's* payment account before income or other funds may reasonably be expected to reach the account; for example, this is likely to be relevant where a *firm* is aware of the *customer's* salary payment date; or
- (2) requests a *payment service provider* to make a payment from the *customer's* payment account where it has reason to believe that there are insufficient funds in the account or that taking the payment would leave insufficient funds for priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills or utility bills); or
- (3) requests a *payment service provider* to make a part payment (a sum due which less than the full sum due at the time the *firm's* payment request is made) of the sum due from the *customer's* payment account before it has made reasonable attempts to collect the full payment of the sum due on the due date; or
- (4) continues to exercise its rights under the *continuous payment authority* for an unreasonable period after the payment due date without taking steps to establish the reason for the payment failure.

[Note: paragraph 3.9mii of DCG]



**7.6.6** **G** Where permissible, a *firm* should only make a reasonable number of payment requests to a *payment service provider* to collect a part payment (a sum due which is less than the full sum due at the time the *firm's* payment request is made) from the *customer's* payment account, having regard to the possibility that the *customer* may be in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

**7.6.7** **R** A *firm* must not exercise its rights under a *continuous payment authority*:

- (1) if the *customer* provides reasonable evidence to the *firm* of being in financial difficulties and the *customer* cannot afford to repay the debt; or
- (2) where the *firm* otherwise becomes aware of the *customer* being in financial difficulties and that the *customer* cannot afford to repay the debt.

[Note: paragraph 3.9mii (box) of DCG]

**7.6.8** **G** (1) If a *firm* becomes aware that a *customer* is in financial difficulties, the *firm* should reassess the payment arrangement and should consider reasonable proposals to revise the payment schedule and alternative repayment arrangements.

[Note: paragraph 3.9mii (box) of DCG]

(2) Where a *customer* informs a *firm* of being in financial difficulties, pending receipt of evidence to that effect, a *firm* should consider suspending exercise of its rights under a *continuous payment authority*.

**7.6.9** **G** In the *FCA's* view, a *firm's* inability to recover the whole of the amount due by the end of the next *working day* after the date on which it was due would indicate that the *customer* may be experiencing financial difficulties. In such a case, a *firm* should suspend exercising its rights under the *continuous payment authority* until it has made reasonable efforts to contact the *customer* to establish the reason why payment was unsuccessful and whether the *customer* is in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

**7.6.10** **G** If the *firm* and the *customer* have agreed an alternative payment date as a contingency option if payment is not available on the due date, the *firm* should suspend the exercise of its rights under the *continuous payment authority* after the due date, and again after the alternative payment date (if the *firm* is unable to recover the amount due at the end of that day) and make reasonable efforts (in accordance with ■ CONC 7.6.9 G) to contact the *customer* to establish the reason why payment was unsuccessful and whether the *customer* is in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

7.6.11

**G**

If reasonable efforts to contact the *customer* are unsuccessful or a *customer* refuses to engage with the *firm* and there is no further evidence of financial difficulties, any subsequent exercise of its rights under the *continuous payment authority* should be reasonable and not excessive, having regard to the possibility that an unresponsive *customer* may nevertheless be in financial difficulties and that a *customer* who was not in financial difficulties at the time of contact may subsequently be in financial difficulties.

[Note: paragraph 3.9mii (box) of DCG]

### Continuous payment authorities and high-cost short-term credit

7.6.12

**R**

- (1) Subject to (3) to (5), a *firm* must not request a *payment service provider* to make a payment, under a *continuous payment authority*, to collect (in whole or in part) a sum due for *high-cost short-term credit* if it has done so in connection with the same agreement for *high-cost short-term credit* on two previous occasions and those previous payment requests have been refused.
- (2) For the purposes of (1) and (3):
  - (a) if *high-cost short-term credit* has been refinanced, except in exercise of forbearance, the agreement is to be regarded as the same agreement; and
  - (b) "refinance" and "exercise forbearance" have the same meaning as in ■ CONC 6.7.17 R.
- (3) Where a *firm* exercises forbearance:
  - (a) paragraph (1) applies or continues to apply to the agreement; but
  - (b) any refusal of a payment request that took place before the time at which the forbearance was granted is to be disregarded for the purposes of (1).
- (4) Paragraph (5) applies following the refusal of two payment requests a *firm* has made to a *payment service provider* under a *continuous payment authority* to collect a sum due for *high-cost short-term credit*, where the *firm* proposes to refinance the *high-cost short term credit* in question in accordance with ■ CONC 6.7.17 R to ■ CONC 6.7.23 R.
- (5) If the *firm* contacts the *customer* and, in the course of an dialogue between the *firm* and the *customer*:
  - (a) the *firm* notifies the *customer* of the refusal of the payment requests;
  - (b) the *firm* reminds the *customer* of the matters in ■ CONC 4.6.2R (2), taking account of any proposed changes to the terms of the *continuous payment authority* that will apply following the refinance if the *customer* consents; and
  - (c) the *customer* gives express consent to the *firm* further exercising its rights under the *continuous payment authority* following the refinance;

the *firm* may then make further payment requests under the *continuous payment authority* following the refinance in accordance with ■ CONC 7.6, and paragraph (1) applies as if the *firm* had not made a payment request under the *continuous payment authority* before the refinance.

- (6) This *rule* does not apply to an agreement which provides for repayment in instalments.

[Note: Until the end of 30 June 2014, transitional provisions apply to ■ CONC 7.6.12 R: see ■ CONC TP 3.4]

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

7.6.13

**R**

- (1) Where:

- (a) *high-cost short-term credit* provides for *repayment* in instalments; and
- (b) a *firm* has on two previous occasions made a payment request, under a *continuous payment authority*, to collect (in whole or in part) the same instalment due under the agreement, which have been refused;

subject to (3) and (4), the *firm* must not make a further payment request under the *continuous payment authority* to collect that instalment.

- (2) The *firm* must not make a further payment request under the *continuous payment authority* to collect any other instalment that is or becomes due under the agreement, unless any request is in accordance with ■ CONC 7.6 and in the course of a dialogue between the *firm* and the *customer*:

- (a) the *firm* notifies the *customer* of the refusal of the payment requests;
- (b) repayment of the instalment referred to in (1)(b) has been made using a method other than a *continuous payment authority* and the *customer* is not in arrears; and
- (c) where (a) and (b) apply, the *firm* has reminded the *customer* of the date and amount of the next instalment.

- (3) If, where the prohibition in (1) applies, a *firm* exercises forbearance within the meaning of ■ CONC 6.7.17 R the *firm* must not make a further payment request under the *continuous payment authority* to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:

- (a) a payment request is in accordance with ■ CONC 7.6;
- (b) the *firm* notifies the *customer* of the refusal of the payment requests; and
- (c) in the course of a dialogue between the *firm* and the *customer*, the *firm* reminds the *customer* of the date and amount of the next instalment and following which the *customer* gives express consent to further payment requests being made under the *continuous payment authority*.

7.6.14 R

- (4) If, where the prohibition in (1) applies, a *firm* adds no charge or additional interest in connection with missing a payment on the due date, the *firm* must not make a further payment request under the *continuous payment authority* to collect the instalment referred to in (1) or a payment request for any other instalment that is or becomes due under the agreement, unless:
- (a) a payment request is in accordance with ■ CONC 7.6;
  - (b) the *customer* has missed making a payment on the due date; and
  - (c) in the course of a dialogue between the *firm* and the *customer*, the *firm* reminds the *customer* of the date and amount of the next instalment and following which the *customer* gives express consent to further payment requests being made under the *continuous payment authority*.

[Note: Until the end of 30 June 2014, transitional provisions apply to ■ CONC 7.6.13 R: see ■ CONC TP 3.5]

7.6.15 G

- (1) Subject to (2), a *firm* must not request a *payment service provider* to make a payment under a *continuous payment authority* to collect a sum due for *high-cost short-term credit* if that sum is less than the full sum due at the time the request is made.
- (2) Where a *firm*:
- (a) following contact with a *customer*, refinances the agreement in accordance with ■ CONC 6.7.17 R to ■ CONC 6.7.23 R by granting an indulgence which allows for one or more *repayment* of a reduced amount under a repayment plan;
  - (b) notifies the *customer* of the number and frequency of *repayments* and their amount under the repayment plan; and
  - (c) the *customer* gives express consent to the *firm* to make payment requests to collect the *repayments* notified under the plan;

[Note: Until the end of 30 June 2014, transitional provisions apply to ■ CONC 7.6.14 R: see ■ CONC TP 3.6]

paragraph (1) does not prevent the *firm* from making a payment request in accordance with ■ CONC 7.6 under a *continuous payment authority* to collect *repayments* of those amounts in accordance with the plan.

- (1) ■ CONC 7.6.12 R, ■ CONC 7.6.13 R and ■ CONC 7.6.14 R do not prevent a *firm* accepting payment (including a part payment) from a *customer* using a means of payment other than under a *continuous payment authority*. If, for example, a *customer* consents separately that a single payment of a specified amount may be taken on the same day or on another specified day using his or her debit card details, this is excluded from the definition of *continuous payment authority*.
- (2) ■ CONC 7.6.14 R does not prevent a *firm* from making a payment request concerning a sum due where the *firm* has varied an agreement so that the sum due is less than it was before the variation.

(3) *Firms* are reminded of their record-keeping obligations under ■ SYSC 9.1.1 R and ■ SYSC 9.1.1AR (general rules on record-keeping) which in particular require sufficient records to be kept to ascertain that the *firm* has complied with all obligations with respect to *customers*. These should include, for example, arranging to keep records of payment requests (including refusals of payment requests) made under *continuous payment authorities* and to keep suitable written or other records of the consents referred to in ■ CONC 7.6.1 R, ■ CONC 7.6.12 R, ■ CONC 7.6.13 R and ■ CONC 7.6.14 R.

**7.6.15A** **G**

- (1) Paragraph (2) applies where a guarantor has provided a guarantee or an indemnity (or both) in respect of *high-cost short-term credit*. (See ■ CONC 7.1.4R for the meanings of “guarantor” and “guarantee”.)
- (2) ■ CONC 7.6.12R and ■ CONC 7.6.13R apply to a *continuous payment authority* granted by the *borrower* and to a *continuous payment authority* granted by a guarantor separately. This means that the *firm* may make up to two requests for payment under a *continuous payment authority* granted by the *borrower* and, if those requests are unsuccessful, up to two requests for payment under a *continuous payment authority* granted by the guarantor.

**Cancelling a continuous payment authority**

**7.6.16** **R**

A *firm* must not by any means improperly or unfairly inhibit or discourage a *customer* from cancelling a *continuous payment authority* including by:

- (1) misleading the *customer*, expressly or by omission, regarding the right to cancel and how it may be exercised; or
- (2) failing to respond promptly to requests by or on behalf of the *customer* to amend or cancel the *continuous payment authority*; or
- (3) intimidating a *customer* who wishes to cancel the *continuous payment authority*; or
- (4) requiring *customers* who wish to cancel the *continuous payment authority* to go through an unduly complicated process.

[Note: paragraph 3.9miv of DCG]

**7.6.17** **R**

A *firm* must cease to exercise its rights under the *continuous payment authority* once it is notified that the *continuous payment authority* has been cancelled.

[Note: paragraph 3.9miv of DCG]



## 7.7 Application of interest and charges

- 7.7.1** **G** When levying charges for debt recovery on *customers* in default or arrears difficulties *firms* should consider their obligation under *Principle 6* to pay due regard to the interests of *customers* and treat them fairly.
- [Note: paragraphs 3.1 and 3.10 of DCG]
- 7.7.2** **R** A *firm* must not claim the costs of recovering a debt from a *customer* if it has no contractual right to claim such costs.
- [Note: paragraph 3.11b of DCG]
- 7.7.3** **R** A *firm* must not cause a *customer* to believe that the *customer* is legally liable to pay the costs of recovery where no such obligation exists.
- [Note: paragraph 3.11a of DCG]
- 7.7.4** **G** Where a *firm* has a contractual right to levy default charges, a *regulated credit agreement* must state the charges and the conditions for making the charge under, as the case may be, the Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014) or the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553).
- [Note: paragraphs 3.11c of DCG and 7.15 of ILG]
- 7.7.5** **R** A *firm* must not impose charges on *customers* in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the *firm*.
- [Note: paragraphs 3.11 of DCG and 7.15 of ILG]



## 7.8 Jurisdictional requirements

**7.8.1** **R** A *firm* dealing with a *customer* who is resident in a different jurisdiction to the jurisdiction of the *firm's* place of business must ensure that it takes appropriate account of any differences in law and court procedure that may have a significant impact on the *customer's* rights.

[Note: paragraph 2.3 of DCG]

**7.8.2** **G** ■ CONC 7.8.1 R will apply, for example, where a *firm's* place of business is in England and the *customer* resides in Scotland.

[Note: paragraph 2.3 of DCG]

**7.8.3** **R** A *firm* must not commence proceedings or threaten to commence proceedings in the wrong jurisdiction.

[Note: paragraph 3.5g of DCG]



## 7.9 Contact with customers

### Contacting customers

- 7.9.1** **R** A *firm* must ensure that a *person* contacting a *customer* on its behalf explains to the *customer* the following matters:
- (1) who the *person* contacting the *customer* works for;
  - (2) the *person's* role in or relationship with the *firm*; and
  - (3) the purpose of the contact.
- [Note: paragraph 3.3c of DCG]
- 7.9.2** **R** A *firm* must not in a communication with the *customer* make a statement which may induce the *customer* to contact the *firm* misunderstanding the reason for making contact.
- [Note: paragraph 3.3d of DCG]
- 7.9.3** **G**
- (1) An example of a misleading communication in **■ CONC 7.9.2 R** is a calling card left at the *customer's* address which states or implies that the *customer* has missed a delivery and encourages the *customer* to make contact.
- [Note: paragraph 3.3d (box) of DCG]
- (2) The clear fair and not misleading *rule* in **■ CONC 3.3.1 R** also applies to a *firm* in relation to a communication with a *customer* in relation to *credit agreement* or a *consumer hire agreement*.
- 7.9.4** **R** A *firm* must not contact *customers* at unreasonable times and must pay due regard to the reasonable requests of *customers* (for example, *customers* who work in a shift pattern) in respect of when, where and how they may be contacted.
- [Note: paragraphs 3.3j and k of DCG]
- 7.9.5** **R** A *firm* must not require a *customer* to make contact on a premium rate or other special rate telephone number the charge for which is higher than to a standard geographic telephone number.
- [Note: paragraph 3.3l of DCG]



- 7.9.5A **G** *Firms* should note the effect of the *call charges rule* in ■ GEN 7.
- Communication with third parties**.....
- 7.9.6 **R** A *firm* must not unfairly disclose or threaten to disclose information relating to the *customer's* debt to a third party.
- [Note: paragraph 3.7p of DCG]
- 7.9.7 **R** When contacting a *customer*:
- (1) a *firm* must ensure that it does not act in a way likely to be publicly embarrassing to the *customer*; and
  - (2) a *firm* must take reasonable steps to ensure that third parties do not become aware that the *customer* is being pursued in respect of a debt
- [Note: paragraph 3.7q of DCG].
- 7.9.8 **G** The reasonable steps required by ■ CONC 7.9.7 R may, for example, require a *firm* to ensure that:
- (1) post sent by the *firm* is properly addressed to the *customer* and marked "private and confidential" or an expression to the same effect;
  - (2) where the *firm* has a name which indicates its debt collection activities, its name is not shown so that third parties may see the name on the *firm's* communications.
- 7.9.9 **G** ■ CONC 7.9.7 R would not preclude a *firm* sending a statutory notice to a *customer's* last known address, where it takes reasonable steps including those referred to in ■ CONC 7.9.8 G.
- 7.9.10 **R** A *firm* must not disclose details of a debt to an *individual* without first establishing, by suitably appropriate means, that the *individual* is (or acts on behalf of) the *borrower* or *hirer* under the relevant agreement).
- [Note: paragraph 3.9b of DCG]
- 7.9.11 **G** A *firm* which:
- (1) threatens debt recovery action against the "occupier" of particular premises; or
  - (2) sends a payment demand to all persons sharing the same name and date of birth or address as the *customer*;
- is likely to contravene ■ CONC 7.9.10 R.
- [Note: paragraphs 3.9a (box) and 3.9b (box) of DCG]

Debt collection visits

- 7.9.12 **R** Unless it is not practicable to do so, a *firm* must ensure that a *person* visiting a *customer* on its behalf:
- (1) clearly explains to the *customer* the purpose and intended outcome of the proposed visit; and
- [Note: paragraph 3.12 of DCG]
- (2) gives the *customer* adequate notice of the date and likely time (at a reasonable time of day) of the visit.
- [Note: paragraph 3.13g of DCG]
- 7.9.13 **G** Failure to explain the purpose and intended outcome of a proposed initial visit to the *customer* or to give adequate notice prior to a proposed initial visit to the *customer* may not contravene **CONC 7.9.12 R**, provided that the *customer* is happy to speak to the *person* pursuing recovery of the debt at that time. However, where, at the initial visit the *customer* indicates a preference to use the first visit to agree a more convenient time for a future visit, the *person* pursuing recovery of the debt should respect the *customer's* wishes. It is important that the *customer* is given reasonable time to prepare for a visit and should not be coerced or pressurised into immediate discussions or decisions.
- [Note: paragraph 3.13g (box) of DCG]
- 7.9.14 **R** A *firm* must ensure that all *persons* visiting a *customer's* property on its behalf act at all times in accordance with the requirements of **CONC 7** and do not:
- (1) act in a threatening manner towards a *customer*;
  - (2) visit a *customer* at a time when they know or suspect that the *customer* is, or may be, particularly vulnerable;
  - (3) visit at an inappropriate location unless the *customer* has expressly consented to the visit;
  - (4) enter a *customer's* property without the *customer's* consent or an appropriate court order;
  - (5) refuse to leave a *customer's* property when it becomes apparent that the *customer* is unduly distressed or might not have the mental capacity to make an informed repayment decision or to engage in the debt recovery process;
  - (6) refuse to leave a *customer's* property when reasonably asked to do so;
  - (7) visit or threaten to visit a *customer* without the *customer's* prior agreement when a debt is deadlocked or reasonably queried or

disputed (see ■ CONC 7.14 (Settlements, disputed and deadlocked debt)).

[**Note:** paragraphs 3.12 and 3.13 of *DCG*]

**7.9.15** **G** It would normally be inappropriate to visit a *customer* at the *customer* place of work or at a hospital where the *customer* is a patient.

## 7.10 Treatment of customers with mental capacity limitations

- 7.10.1** **R** A *firm* must suspend the pursuit of recovery of a debt from a *customer* when:
- (1) the *firm* has been notified that the *customer* might not have the mental capacity to make relevant financial decisions about the management of the *customer's* debt and/or to engage in the debt recovery process at the time; or
  - (2) the *firm* understands or ought reasonably to be aware that the *customer* lacks mental capacity to make relevant financial decisions about the management of the *customer's* debt and/or to engage in the debt recovery process at the time.
- [Note: paragraphs 3.7r of DCG and 7.13 of ILG]
- 7.10.2** **G** A *firm* should allow a *customer* or a *person* acting on behalf of the *customer* a reasonable period of time to provide evidence as to the likely impact of any mental capacity limitation on the *customer's* ability to engage with the *firm*.
- [Note: paragraph 3.7r (box) of DCG]
- 7.10.3** **G** ■ CONC 7.10.1 R does not prevent a *firm* from pursuing the debt through a responsible third party acting on behalf of the *customer*, where the *customer* has given prior consent, for example, pursuant to a registered lasting power of attorney.
- [Note: paragraph 3.7r (box) of DCG]
- 7.10.4** **G** *Firms* should note ■ CONC 7.2.1 R (and its accompanying *guidance*) which requires *firms* to establish and implement policies and procedures for the fair and appropriate treatment of particularly vulnerable *customers*.



## 7.11 Disclosures relating to “authority” or “status”

- 7.11.1** **R** When contacting *customers*, a *firm* must not misrepresent its authority or its legal position with regards to the debt or debt recovery process.
- [Note: paragraph 3.4 of DCG ]
- 7.11.2** **G** For example, a *person* misrepresents authority or the legal position if they claim to work on instructions from the courts as bailiffs or, in Scotland, sheriff officers or messengers-at-arms, or in Northern Ireland, to work on instructions from the Enforcement of Judgements Office when this is untrue.
- [Note: paragraph 3.5a of DCG ]
- 7.11.3** **R** A *firm* must not use official looking documents which are designed to, or are likely to, mislead a *customer* as to the status of the *firm*.
- [Note: paragraph 3.3a of DCG ]
- 7.11.4** **R** A *firm* must not falsely suggest or state that it is a member of a trade body or is accredited by a trade body.
- [Note: paragraph 3.5c (box) of DCG ]
- 7.11.5** **G** It is an offence under section 17 of the Legal Services Act 2007 to falsely imply that a *person* is entitled to carry on a reserved legal activity, for example, to conduct litigation or to appear before and address a court, or to take or use any relevant name, title or description, for example, “solicitor”.
- [Note: paragraph 3.5c (box) of DCG ]
- 7.11.6** **R** A *firm* must not suggest or state that action can or will be taken when legally it cannot be taken.
- [Note: paragraph 3.5b of DCG]
- 7.11.7** **G** Examples of where a *firm* is likely to contravene **CONC 7.11.6 R** include where a *firm* or a *person* acting on its behalf:

- (1) states or implies that bankruptcy or sequestration proceedings may be initiated when the balance of the outstanding debt is too low to qualify for such proceedings;
- (2) states or implies that steps will be taken to enforce a debt where the *customer* is making payments under a Debt Payment Programme Arrangement agreed under the Debt Arrangement and Attachment (Scotland) Act 2002;
- (3) claims a right of entry will be exercised when no court order to this effect has been granted; or
- (4) states that *goods* will be repossessed when they are “protected goods” (as defined under section 90(7) of the CCA) and no specific authorisation to repossess the *goods* has been granted by a court.

[Note: paragraph 3.5b (box) of DCG]

7

7.11.8

**R**

A *firm* must not suggest or state that it will commence proceedings for a warrant of execution or an attachment of earnings order when a court judgment has not been obtained, or that it will take any other enforcement action before it is possible to know whether such action will be permissible.

[Note: paragraph 3.5c of DCG]

7.11.9

**R**

A *firm* must not suggest or state that an action has been taken when no such action has been taken.

[Note: paragraph 3.5d (box) of DCG]



## 7.12 Lenders' responsibilities in relation to debt

### Application

7.12.1 **R** This section applies to a *firm* with respect to *consumer credit lending*.

### Unfair business practices

7.12.2 **R** A *firm* must not:

- (1) refuse to deal with a *not-for-profit debt advice body*, *debt counsellor*, *debt adjuster* or with another *person* acting on behalf of a *customer*, unless there is an objectively justifiable reason for doing so;

[Note: paragraphs 3.9c of *DCG* and 3.48 of *DMG*]

- (2) unless the *credit agreement* requires payments to be made to a third party, refuse to accept a payment tendered to the *firm* by the *customer* or by a *person* acting on behalf of the *customer*;

[Note: paragraphs 3.8 of *DCG* and 3.49a of *DMG*]

- (3) refuse to deal with a *customer* who is developing a repayment plan, a third party who is assisting a *customer* to develop a repayment plan or a third party who is developing a *debt management plan* for the *customer's* debts, unless there is an objectively justifiable reason for doing so;

[Note: paragraphs 3.9c of *DCG* and 3.49b of *DMG*]

- (4) where a *person* is acting on behalf of a *customer*, directly contact the *customer* without the *customer's* consent, unless there is an objectively justifiable reason for doing so;

[Note: paragraph 3.9d of *DCG*]

- (5) operate a policy:

- (a) of only negotiating the freezing of interest and charges on a *customer's* debts where the *lender* has an existing arrangement with a *person* acting on behalf of the *customer*; or

[Note: paragraph 3.49e of *DMG*]

- (b) of refusing to negotiate with certain third parties or with a *customer* developing their own repayment plan; or

7.12.3

G

[Note: paragraph 3.49c (box) of DMG]

- (6) return or refuse a *repayment* or refuse to credit a *repayment* to a *customer's* account merely because the *repayment* is tendered by a *debt management firm*.

[Note: paragraph 3.49a of DCG]

- (1) ■ CONC 1.2.2 R requires a *firm* to ensure its employees and agents comply with CONC and that it takes reasonable steps to ensure other *persons* who act on its behalf do so. This *rule* would apply where a *debt collector* acts as agent or on behalf of a *lender*.

- (2) Situations where it may be justified for a *firm* to refuse to deal with a *person* acting on behalf of a *customer* may include, for example, refusing to deal with that *person* where the *firm* is able to show that the *person* has failed to comply with consumer protection legislation or with *FCA rules*.

[Note: paragraph 3.48 of DMG]

- (3) It may be justified for a *firm* to contact a *customer* directly where:
  - (a) repeated unsuccessful efforts have been made to contact a *person* acting on behalf of the *customer*; or

[Note: paragraphs 3.9d of DCG and 3.49c (box) of DMG]

- (b) the *firm* reasonably believes the *person* acting on behalf of the *customer* is acting against the best interests of the *customer*.

- (4) Situations where it would be justified for a *firm* to contact a *customer* directly include, for example:

- (a) sending a statutory notice, taking the reasonable steps required by ■ CONC 7.9.7 R; or
  - (b) where the sole purpose of the contact is to signpost the *customer* to *not-for-profit debt advice bodies*.

- (5) Where a *firm* is in dispute with a *person* acting on behalf of the *customer* it should make its position known to that *person* and to the *customer* as soon as practicable.

[Note: paragraph 3.49d of DMG]

- (6) The *FCA* does not believe it is justified to bypass contacting a *person* acting on behalf of a *customer* merely because that *person* has not agreed to comply with the Insolvency Service's Debt Management Protocol.





## 7.13 Data accuracy and outsourced activities

### Data accuracy

- 7.13.1** **G** The obtaining, recording, holding and passing on of information about individuals for the purposes of tracing a *customer* and/or recovering a debt due under a *credit agreement* or a *consumer hire agreement* or a *P2P agreement* will involve the processing of personal data. Accordingly, *firms* processing such data are data controllers or data processors and are obliged to comply with *data protection legislation* and, in particular, to adhere to the data protection principles.
- [Note: paragraph 3.16 of DCG]
- 7.13.2** **R** A *firm* must take reasonable steps to ensure that it maintains accurate and adequate data (including in respect of debt and repayment history) so as to avoid the risk that:
- (1) an *individual* who is not the true *borrower* or *hirer* is pursued for the repayment of a debt; and
  - (2) the *borrower* or *hirer* is pursued for an incorrect amount.
- [Note: paragraphs 3.19 of DCG and 7.11 (box) of ILG]
- 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* that carries on the activity in article 54 of the Exemption Order), whether for the *firm's* or another *person's* business, or to any other *person* involved in recovering the debt or, where appropriate, to a *credit reference agency* is accurate and adequate so as to facilitate the tracing and identification of the true *borrower* or *hirer*.
- [Note: paragraphs 3.20 of DCG and 7.11 (box) ILG]
- 7.13.4** **R** Before pursuing a *customer* for the repayment of a debt, a *firm* must take reasonable steps to verify the accuracy and adequacy of the available data so as to ensure that the true *customer* is pursued for the debt and that they are pursued for the correct amount.
- [Note: paragraphs 3.7e and 3.23a of DCG]

**7.13.5** **G** A *firm* should ensure (subject to any legal requirements) that adequate and accurate information it holds about a *customer* in relation to a debt is made available to *persons* involved on its behalf in the debt recovery process. Information relating to the *customer* which should be made available to agents or employees includes, for example:

- (1) being in financial difficulties;
- (2) being particularly vulnerable;
- (3) disputing the debt;
- (4) a repayment plan or forbearance being in place;
- (5) having a representative acting on the *customer's* behalf.

[Note: paragraph 3.23b (box) of DCG]

**7.13.6** **G** A *firm* should not impose limitations on the number or the extent of reasonable applications that can be made to it for documents or other relevant information pertaining to a *customer* in respect of which it is, or has been, the *lender* or *owner*, by a *firm* seeking such information to facilitate its pursuance of the relevant debt.

[Note: paragraph 3.23i of DCG]

**7.13.7** **R** Where a *firm* has established that an *individual* being pursued for a debt is not the true *borrower* or *hirer* under the *credit agreement*, *regulated credit agreement*, *consumer hire agreement* or *regulated consumer hire agreement* or that the debt has been paid, the *firm* must update its records and the data supplied to the *credit reference agencies* (where applicable).

[Note: paragraph 3.23f of DCG]

### Outsourcing

**7.13.8** **G** ■ SYSC 8.1 includes *rules* and *guidance* on outsourcing with which *firms* must or should comply as appropriate.

**7.13.9** **G** A *firm* seeking to instruct a third party to pursue the recovery of debts or to trace *customers* on its behalf should exercise due care in selecting the third party.

[Note: paragraph 2.5 of DCG]

**7.13.10** **G** A *firm* should take reasonable steps to seek to ensure that, where it has engaged a third party to recover debts on its behalf, the *customer* is not subject to multiple approaches by different *persons*, resulting in repetitive or frequent contact with the *customer* by different parties.

[Note: paragraph 3.7c of DCG]

**7.13.11** **G** Where a *firm* has engaged a third party to recover debts or to trace *customers* on its behalf, it should properly investigate complaints about the third party.

[Note: paragraph 2.5 of DCG]

**7.13.12** **G** ■ CONC 1.2.2 R requires a *firm* to ensure its employees and agents comply with CONC and that it takes reasonable steps to ensure other *persons* who act on its behalf do so.

**7.13.13** **R** A *firm* must ensure that a third party engaged by it, where required, has the appropriate *Part 4A permission* to engage in the *regulated activities* undertaken in the course of the third party's business.

[Note: paragraph 2.6 of DCG]



## 7.14 Settlements, disputed and deadlocked debt

### Disputed debt

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- 7.14.1 **R** (1) A *firm* must suspend any steps it takes or its agent takes in the recovery of a debt from a *customer* where the *customer* disputes the debt on valid grounds or what may be valid grounds.
- [Note: paragraph 3.9k of DCG]
- (2) Paragraph (1) does not apply where a *customer* under a green deal consumer credit agreement (within the meaning of section 189B of the CCA) alleges that the disclosure and acknowledgement provisions in Part 7 of the Green Deal Framework (Disclosure, Acknowledgement, Redress etc) Regulations 2012 (SI 2012/2079) have been breached, but the *lender* reasonably believes this not to be the case.
- 7.14.2 **G** Valid grounds for disputing a debt include that:
- (1) the *individual* being pursued for the debt is not the true *borrower* or *hirer* under the agreement in question; or
- (2) the debt does not exist; or
- (3) the amount of the debt being pursued is incorrect.
- [Note: annex A3 of DCG]
- 7.14.3 **R** Where a *customer* disputes a debt on valid grounds or what may be valid grounds, the *firm* must investigate the dispute and provide details of the debt to the *customer* in a timely manner.
- [Note: paragraph 3.9i of DCG]
- 7.14.4 **R** Where there is a dispute as to the identity of the *borrower* or *hirer* or as to the amount of the debt, it is for the *firm* (and not the *customer*) to establish, as the case may be, that the *customer* is the correct *person* in relation to the debt or that the amount is the correct amount owed under the agreement.
- [Note: paragraphs 3.9j of DCG and 7.11 (box) of ILG]

**7.14.5** **R** A *firm* must provide a *customer* with information on the outcome of its investigations into a debt which the *customer* disputed on valid grounds.

[Note: paragraph 3.3g of DCG]

**7.14.6** **R** Where a *customer* disputes a debt and the *firm* seeking to recover the debt is not the *lender* or the *owner*, the *firm* must:

- (1) pass the information provided by the *customer* to the *lender* or the *owner*; or

[Note: paragraph 3.23h of DCG]

- (2) if the *firm* has authority from the *lender* or *owner* to investigate a dispute, it must notify the *lender* or *owner* of the outcome of the investigation.

**Settlements and deadlocked debt etc**

**7.14.7** **G** A debt repayment is deadlocked where the *customer* (or the *customer's* representative) has acknowledged the *customer's* liability for a debt and has proposed a repayment plan, but the proposed repayment plan is not acceptable to the *firm* seeking to recover the debt.

[Note: annex A4 of DCG]

**7.14.8** **R** A *firm* must give due consideration to a reasonable offer of repayment made by the *customer* or the *customer's* representative.

[Note: annex A5 of DCG]

**7.14.9** **R** Where a *firm* rejects a proposal for repayment from a *customer* in default or in arrears difficulties or from the *customer's* representative, the *firm's* response must include a clear explanation of the reason for the rejection.

[Note: paragraph 7.16 (box) of ILG]

**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* into increasing the offer.

[Note: annex A5 of DCG]

**7.14.11** **G** Examples of conduct that may contravene **CONC 7.14.10 R** would, depending on the circumstances, include where following an unacceptable offer a *firm* immediately:

- (1) sends field agents to visit the *customer* or communicates to the *customer* that it will do so;

[Note: annex A5 (box) to DCG]

(2) substantially increases the rate of interest or imposes a substantial charge or communicates that it will do either of those things.

**7.14.12** **G** In considering the *customer's* repayment offer, a *firm* should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

[Note: annex A6 of DCG]

**7.14.13** **G** (1) Merely making a counter-offer to a *customer's* repayment offer or merely taking steps to enforce an agreement would not contravene ■ CONC 7.14.10 R.

(2) A *firm* which makes a counter offer to a proposal made by or on behalf of the *customer*, should allow the *customer* or the *customer's* representative, a reasonable period of time to consider and respond to the counter offer.

[Note: paragraph 7.16 of ILG]

**7.14.14** **R** If a *firm* accepts a *customer's* offer to settle a debt, it must communicate formally and unequivocally that the offer accompanied by the relevant payment has been accepted as settlement of the *customer's* liability.

[Note: paragraph 3.3h of DCG]



## 7.15 Statute barred debts

**7.15.1** **G** A debt is statute barred where the prescribed period within which a claim in relation to the debt may be brought expires. In England, Wales and Northern Ireland, the limitation period is generally six years in relation to debt. In Scotland, the prescriptive period is five years in relation to debt.

[Note: annex B1 of DCG]

**7.15.2** **G** In England, Wales and Northern Ireland, a statute barred debt still exists and is recoverable.

[Note: paragraph 3.15a and annex B3 of DCG]

**7.15.3** **G** In Scotland, a statute barred debt ceases to exist and is no longer recoverable if:

- (1) a relevant claim on behalf of the *lender* or *owner* has not been made during the relevant limitation period; and
- (2) the debt has not been acknowledged by, or on behalf of, the *customer* during the relevant limitation period.

[Note: annex B3 of DCG]

**7.15.4** **R** Notwithstanding that a debt may be recoverable, a *firm* must not attempt to recover a statute barred debt in England, Wales or Northern Ireland if the *lender* or *owner* has not been in contact with the *customer* during the limitation period.

[Note: paragraph 3.15b of DCG]

**7.15.5** **G** If the *lender* or *owner* has been in regular contact with the *customer* during the limitation period, the *firm* may continue to attempt to recover the debt.

[Note: paragraph 3.15b of DCG]

**7.15.6** **R** A *firm* must endeavour to ensure that it does not mislead a *customer* as to the *customer's* rights and obligations.

[Note: paragraph 3.15b of DCG]

7.15.7 **G** It is misleading for a *firm* to suggest or state that a *customer* may be the subject of court action for the sum of the statute barred debt when the *firm* knows, or reasonably ought to know, that the relevant limitation period has expired.

[Note: paragraph 3.15b of DCG]

7.15.8 **R** A *firm* must not continue to demand payment from a *customer* after the *customer* has stated that he will not be paying the debt because it is statute barred.

[Note: paragraph 3.15b of DCG]

7.15.9 **R** A *firm* must identify for prospective purchasers of debts arising under *credit agreements* or *consumer hire agreements* or *P2P agreements* those debts which it knows or ought reasonably to know are statute barred, so as to avoid a *firm* taking inappropriate action against *customers* in relation to such debts.

[Note: paragraph 3.23c of DCG]

**Complaints to the Financial Ombudsman Service and initiating legal proceedings**

7.15.10 **R** A *lender* must not initiate legal proceedings in relation to a *regulated credit agreement* where the *lender* is aware that the *customer* has submitted a valid complaint or what appears to the *firm* may be a valid complaint relating to the agreement in question that is being considered by the *Financial Ombudsman Service*.

[Note: paragraph 7.9 (box) of ILG]





**7.16 Passing data to lead generators etc.**

**7.16.1** **R** *A firm must not pass on a customer's details to third parties, including lead generators, debt management firms, lenders, owners, debt collectors or credit brokers, unless it is appropriate to do so.*

[Note: paragraph 3.9e of DCG]

**7.16.2** **G** [deleted]



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

[**Note:** Until the end of 30 September 2014, transitional provisions apply to ■ CONC 7.17: see ■ CONC TP 4.3]

### Application

7.17.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement for fixed-sum credit*.

- 7.17.2 **R**
- (1) Subject to (2), this section does not apply where the *P2P agreement* provides for *credit* of less than £50.
  - (2) Paragraph (1) does not apply where two or more *P2P agreements* in relation to the same *borrower* (whether or not with the same *lender*) are entered into at or about the same time.
  - (3) Where (2) applies, the *firm's* obligations in ■ CONC 7.17 apply as if all of the *P2P agreements* made with a *borrower* at or about the same time were a single agreement.

### Notice of sums in arrears for fixed-sum credit

- 7.17.3 **R** A *firm* must comply with this section where the following conditions are satisfied:
- (1) a *borrower* is required to have made at least two payments under the agreement before that time;
  - (2) the total sum paid under the agreement by the *borrower* is less than the total sum required to have been paid before that time;
  - (3) the amount of the shortfall is no less than the sum of the last two payments which the *borrower* is required to have made before that time;
  - (4) the *firm* is not already under a duty to give the *borrower* notices under ■ CONC 7.17.4 R in relation to the agreement;
  - (5) the *lender* is not already under a duty to give the *borrower* notice under section 86B of the CCA; and

- 7.17.4 **R**
- (6) if a judgment has been given in relation to the agreement before that time, there is no sum still to be paid under the judgment by the *borrower*.
- (1) The *firm* must, within the period of 14 days beginning with the day on which the conditions in ■ CONC 7.17.3 R are satisfied, give the *borrower* a notice including the information set out in ■ CONC 7.17.7 R and ■ CONC 7.17.8 R.
- (2) After giving that notice, the *firm* must give the *borrower* further notices including the information in ■ CONC 7.17.7 R and ■ CONC 7.17.8 R at intervals of not more than six *months*.
- 7.17.5 **R**
- (1) The duty of the *firm* to give the *borrower* notices under ■ CONC 7.17.4 R will cease when either of the conditions mentioned in (2) is satisfied but, if either of those conditions is satisfied before the notice required by ■ CONC 7.17.4R (1) is given, the duty will not cease until that notice is given.
- (2) The conditions referred to in (1) are:
- (a) that the *borrower* ceases to be in arrears;
  - (b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the *borrower*.
- (3) For the purposes of (2)(a) the *borrower* ceases to be in arrears when:
- (a) no payments, which the *borrower* has ever failed to make under the agreement when required, are still owing;
  - (b) no default sum, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing;
  - (c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and
  - (d) no other sum of interest, which has ever become payable under the agreement in connection with the *borrower's* failure to pay any sum under the agreement when required, is still owing.
- (4) A *firm* must accompany the notice required by ■ CONC 7.17.4 R 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";
  - (a) for the bullet point headed "Work out how much money you owe" substitute:

"Work out how much money you owe. To do this, you will need to make a list of all those you owe money to. A debt adviser can help you.";
  - (b) for the bullet point headed "Contact the organisations you owe money to" substitute:

“Contact the peer-to-peer (P2P) platform which arranged your loan. Let them know you are having problems. They may be able to discuss options for paying back what you owe.”;

- (c) For the paragraph headed “Doing nothing could make things worse.” substitute:

“Doing nothing could make things worse.

You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase.”.

- (5) The *firm* must not charge the *borrower* a fee in connection with preparation of or the giving of the notice required by ■ CONC 7.18.4 R.

**7.17.6**

**R**

In this section “payments” means payments to be made at predetermined intervals provided for under the terms of the agreement.

**Content of arrears notices: fixed-sum credit**

**7.17.7**

**R**

The notice required by ■ CONC 7.17.4 R must contain the following information:

- (1) a form of wording to the effect that the notice is given in compliance with the *rules* because the *borrower* is behind with the sums payable under the agreement;
- (2) a form of wording encouraging the *borrower* to discuss the state of his account with the *firm*;
- (3) the date of the notice;
- (4) (a) the name, telephone number or numbers, the postal address, and, where appropriate, any other address of the *firm*; or  
(b) where the *firm* and the *borrower* have entered into an arrangement under which the *borrower* has been given details of a particular employee or category of employee of the *firm* whom the *borrower* is entitled to contact for all the *borrower's* dealings with the *firm*, the *firm* may, instead of including the telephone number or numbers in (a), refer to that arrangement;
- (5) a description sufficient to identify any agreements and the opening balance under any agreements at the date on which the duty to give the notice arose;
- (6) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:

"Default sums and interest

You may have to pay default sums and interest in relation to the missed or partly made payments referred to in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice."; or

(b) in any other case, a statement in the following form:

"Default sums and interest

You will not incur any default sums or extra interest in relation to the missed or partly made payments referred to in this notice. This notice does not take account of any payments received after the date of the notice.";

(7) a statement in the following form:

"Notices

For so long as you continue to be behind with your payments by any amount, you will be sent notices about this at least every six months. We are not required to send you notices more frequently than this, even if you get further behind with your payments in between notices."; and

(8) a statement in the following form:

"Financial Conduct Authority Information Sheet

This notice should include a copy of the current arrears information sheet prepared by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example to think carefully before borrowing money to repay debts as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Financial Conduct Authority information sheet for more information about how to get advice on dealing with your debt.".

**Content of first required arrears notices**

7.17.8

**R**

Where the notice is given under ■ CONC 7.17.4R (1) the notice must also state the amount of the shortfall under the agreement which gave rise to the duty to give the notice and the *firm* must:

- (1) within 15 *working days* of receiving the *borrower's* request for further information about the shortfall which gave rise to the duty to give the notice, give the *borrower* in relation to each of the sums which comprise the shortfall, notice of:
  - (a) the amount of the sums due which comprise the shortfall;
  - (b) the date on which the sums became due; and
  - (c) the amounts the *borrower* has paid in respect of the sums due and the dates of those payments;

(2) except where the original notice contained all the information specified in (1), include a statement in the following form

"If you want more information about which payments you failed to make please get in touch with us. We are required to give you this

information within fifteen working days of receiving your request for it."; and

- (3) where the *firm* and the *borrower* have entered into an agreement to aggregate, the references to sums due and to amounts paid in (1) may be construed as a reference to the aggregated sums due to the *firm* (on behalf of the *lender*) and the aggregated amounts paid by the *borrower* in accordance with the terms of that agreement.

### **Content of required arrears notices except first required notices**

7.17.9

**R**

Where the notice is given under ■ CONC 7.17.4R (2) the notice must also contain the following information:

- (1) that part of the opening balance referred to in ■ CONC 7.17.7R (5) which comprises any sum which the *borrower* has failed to pay in full when it became due under the agreement, whether or not such sums have been included in a previous notice;
- (2) the amount and date of any sums paid into the account by, or to the credit of, the *borrower* during the period to which the notice relates;
- (3) the amount and date of any interest or other charges payable by the *borrower* which became due during the period to which the notice relates, whether or not the interest or other charges relate only to that period. But where the rate or rates of interest provided for under the agreement are not applicable on a per annum basis, this sub-paragraph does not require amounts and dates of interest which became due during the period to which the notice relates to be set out separately in the notice;
- (4) the amount and date of any movement in the account during the period to which the notice relates which is not required to be included in the notice under (2) and (3);
- (5) the balance under the agreement at the end of the period to which the notice relates;
- (6) that part of the balance referred to in (5) which comprises any sum which the *borrower* has failed to pay in full when it became due under the agreement and which remains unpaid at the end of the period to which the notice relates, whether or not such a sum has been included in a previous notice; and
- (7) add the following words to the end of the first sentence of the statement in ■ CONC 7.17.7R (6)(a): "(in addition to any default sums and interest included in this notice)."

7.17.10

**R**

Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the *firm* must include wording explaining why it is not such a demand.

7.17.11 **R** The reference to the account in ■ CONC 7.17.9R (2) and ■ CONC 7.17.9R (4) are to be construed as a reference to all accounts maintained by the *firm* (on behalf of a *lender*) which relate to the agreement with the *borrower*.

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

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 7.18: see ■ CONC TP 4.4]

### Application

- 7.18.1 **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a P2P agreement for running account credit.

### Notice of sums in arrears for running account credit

- 7.18.2 **R** A *firm* must comply with this section where the following conditions are satisfied:
- (1) a *borrower* is required to have made at least two *repayments* under the agreement;
  - (2) the last two *repayments* which the *borrower* is required to have made before that time have not been made;
  - (3) the *firm* has not already been required to give a notice under ■ CONC 7.18.3 R in relation to the agreement;
  - (4) the *lender* is not already under a duty to give the *borrower* notice under section 86C of the CCA; and
  - (5) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the *borrower*.
- 7.18.3 **R**
- (1) The *firm* must, when the *firm* next sends a statement to the *borrower*, give or send the *borrower* a notice including the information set out in ■ CONC 7.18.5 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";



- (a) for the bullet point headed "Work out how much money you owe" substitute:

"Work out how much money you owe. To do this, you will need to make a list of all those you owe money to. A debt adviser can help you."

- (b) for the bullet point headed "Contact the organisations you owe money to" substitute:

"Contact the peer-to-peer (P2P) platform which arranged your loan. Let them know you are having problems. They may be able to discuss options for paying back what you owe."

- (c) For the paragraph headed "Doing nothing could make things worse." substitute:

"Doing nothing could make things worse.

You could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in future. If you continue not to make payment this could lead to legal action against you for repayment or the return of goods on hire purchase."

- (3) The *firm* must not charge the *borrower* a fee in connection with the preparation of or the giving of the notice required by (1).
- (4) The notice required by (1) may be incorporated in a statement or other notice which the *firm* gives to the *borrower* in relation to the agreement by virtue of *FCA rules* or the *CCA*.

**7.18.4** **R** In this section "payments" means payments to be made at predetermined intervals provided for under the terms of the agreement.

**Content of arrears notices: running account credit**.....

**7.18.5** **R** The notice referred to in **CONC 7.18.3 R** must contain the following information:

- (1) a form of wording to the effect that it is given in compliance with the *rules* because the *borrower* is behind with his payments under the agreement;
- (2) a form of wording encouraging the *borrower* to discuss the state of his account with the *firm*;
- (3) the date of the notice;
- (4) a description of the agreement sufficient to identify it;
- (5) (a) the name, telephone number, postal address and, where appropriate, any other address of the *firm*; or  
(b) where the *firm* and the *borrower* have entered into an arrangement under which the *firm* has given the *borrower* details of a particular employee or category of employee of the *firm* whom the *borrower* is entitled to contact for all his dealings with

the *firm*, the *firm* may, instead of including the telephone number or numbers referred to in (a), refer to that arrangement;

- (6) in relation to each of the last two payments which the *borrower* is required under the agreement to have made and which have not been paid or not fully paid:
- (a) the amount payable;
  - (b) the date on which that amount became due;
  - (c) in the event that the *borrower* has paid part of that amount, the amount the *borrower* has paid and the date on which that payment was made;
  - (d) the nature of the amount due; and
  - (e) the aggregate of the amounts payable as shown under (a), less the aggregate of the amounts paid as shown under (c);
- (7) a statement in the following form:
- "Missed and partly made payments
- This notice does not give details of missed or partly made payments previously notified whether or not they remain unpaid."
- (8) (a) where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form:
- "Default sums and Interest
- You may have to pay default sums and interest in relation to the missed or partly made payments indicated above in addition to any default sums and interest already included in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice."; or
- (b) in any other case, a statement in the following form:
- "Default sums and Interest
- You will not incur any default sums or extra interest in relation to the missed or partly made payments indicated above. This notice does not take account of any payments received after the date of the notice."; and
- (9) a statement in the following form:
- "Financial Conduct Authority Information Sheet
- This notice should include a copy of the current arrears information sheet issued by the Financial Conduct Authority. This contains important information about your rights and where to go for support and advice, for example, to think carefully before borrowing money to repay debts, as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the

Financial Conduct Authority information sheet for more information about how to get advice on dealing with your debt."

- 7.18.6** **R** Where the notice includes a form of wording to the effect that it is not a demand for immediate payment, the *firm* must include wording explaining why it is not such a demand.
- 7.18.7** **R**
- (1) Subject to (2), where the total amount which the *borrower* has failed to pay in relation to the last two payments due under the agreement prior to the date on which the *firm* came under a duty to give the *borrower* a notice under **CONC 7.18.3 R** is not more than £2, the notice:
    - (a) need not include any of the information or statements referred to in **CONC 7.18.4 R**;
    - (b) but, in that event, shall contain a statement in the following form:

"You have failed to make two minimum payments

Failing to make minimum payments can mean that you have broken the terms of this credit agreement. This could result in your having to pay additional costs. A copy of the Financial Conduct Authority Arrears information sheet is enclosed, which contains more information about what to do when you get behind with your payments.";
  - (2) Paragraph (1) does not apply where at the date on which the duty to give notice arose a default sum or other charge has become payable as a result of the *borrower's* failure to pay sums as set out in (1).

## 7.19 Notice of default sums under P2P agreements

[Note: Until the end of 30 September 2014, transitional provisions apply to ■ CONC 7.19: see ■ CONC TP 4.5]

### Application

**7.19.1** **R** This section applies to a *firm* with respect to *operating an electronic system in relation to lending* in relation to a *borrower* under a *P2P agreement*.

**7.19.2** **R**

- (1) Subject to (2), this section does not apply where the *P2P agreement* provides for *credit* of less than £50.
- (2) Paragraph (1) does not apply where two or more *P2P agreements* in relation to the same *borrower* (but whether or not with the same *lender*) are entered into at or about the same time.
- (3) Where (2) applies, the *firm's* obligation in ■ CONC 7.19.4 R applies as if all of the *P2P agreements* made with a *borrower* at or about the same time were a single agreement.

**7.19.3** **R**

- (1) In this section "default sum" means in relation to the *borrower* under a *P2P agreement*, a sum (other than a sum of interest) which is payable by the *borrower* under the agreement in connection with a breach of the agreement by the *borrower*.
- (2) But a sum is not a default sum in relation to the *borrower* simply because as a consequence of the breach of the agreement the *borrower* is required to pay the sum earlier than would otherwise have been the case.

### Notice of default sums

**7.19.4** **R** Where a default sum becomes payable under a *P2P agreement* by the *borrower*, the *firm* must give notice to the *borrower* within 35 days of a default sum becoming payable by the *borrower*.

**7.19.5** **R** The notice required by ■ CONC 7.19.4 R must contain:

- (1) a form of wording to the effect that it relates to default sums and is given in compliance with *FCA rules*;

- (2) the date of the notice;
- (3) a description of the agreement sufficient to identify it;
- (4) the *firm's* name, telephone number, postal address and, where appropriate, any other address;
- (5) the amount and nature of each default sum payable under the agreement which has not been the subject of a previous notice of default sums;
- (6) the date upon which each default sum referred to in the notice became payable under the agreement;
- (7) the following statement:

"This notice does not take account of default sums which we have already told you about in another default sum notice, whether or not those sums remain unpaid."; and
- (8) the total amount of all the default sums included in the notice.

