

**CONSUMER CREDIT (EARLIER INTERVENTION AND PERSISTENT DEBT)  
INSTRUMENT 2018**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 137A (General rule-making power);
  - (2) section 137T (General supplementary powers); and
  - (3) section 139A (The FCA’s power to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 March 2018.

**Amendments to the Handbook**

- D. The Consumer Credit sourcebook (CONC) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018.

By order of the Board  
22 February 2018

## Annex

## Amendments to the Consumer Credit sourcebook (CONC)

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

## 6 Post contractual requirements

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### 6.7 Post contract: business practices

Application

6.7.1 R ...

(3) CONC 6.7.3AR to CONC 6.7.3DG and CONC 6.7.27R to CONC 6.7.40G do not apply in relation to a credit card of a type that the firm promotes to customers solely for the purposes in each case of the customer's business (a "business credit card").

Business practices

6.7.2 R (1) A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

(2) This rule does not apply in relation to a credit card unless the card is a business credit card (see CONC 6.7.1R(3)).

[Note: paragraph 6.2 of ILG]

6.7.3 G ...

Business practices: credit cards

6.7.3A R A firm must monitor a credit card customer's repayment record and any other relevant information held by the firm and take appropriate action where there are signs of actual or possible financial difficulties.

6.7.3B G (1) Circumstances in which there are signs of actual or possible financial difficulties include where there is a significant risk of one or more of the matters set out in CONC 1.3.1G(1) to (7) (Guidance on financial difficulties) occurring in relation to the credit card customer.

(2) Examples of appropriate action as referred to in CONC 6.7.3AR would include the firm doing one or more of the following, as may be relevant in the circumstances:

- (a) considering suspending, reducing, waiving or cancelling any further interest, fees or charges (for example, when a customer provides evidence of financial difficulties and is likely to be unable to meet payments as they fall due or is only able to make token payments, where in either case the level of debt would continue to rise if interest, fees and charges continue to be applied);
- (b) 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);
- (c) notifying the customer of the risk of escalating debt, additional interest, fees or charges and of potential financial difficulties; and
- (d) providing contact details for not-for-profit debt advice bodies and encouraging the customer to contact one of them.
- (3) A customer paying the minimum amount required under the agreement is not, by itself, a sign of possible or actual financial difficulties under CONC 6.7.3AR. It may, however, be such a sign where, for example, a customer with a pattern of paying more than the minimum required payment reduces the payments to the minimum required payment due, but their pattern of drawing down credit on the card does not materially change.
- (4) In determining what is "appropriate action" under CONC 6.7.3AR, a firm should take into account any steps it has taken under CONC 6.7.30R, CONC 6.7.31R or CONC 6.7.37R.
- 6.7.3C R A firm must establish, implement and maintain an adequate policy for identifying and dealing with customers showing signs of actual or possible financial difficulties, even though they may have not missed a payment.
- 6.7.3D G The policy referred to in CONC 6.7.3CR is in addition to the policy required under CONC 7.2.1R.

...

Credit cards: persistent debt

- 6.7.27 R (1) This rule applies to a firm with respect to communicating with a customer about, and receiving payments or exercising rights under, a credit card agreement if the firm assesses that the amount the customer has paid to the firm towards the credit card balance over the immediately preceding 18 month period comprises a lower

amount in principal than in interest, fees and charges.

- (2) A firm must assess whether the condition in paragraph (1) is met at least once a month.
- (3) The rule in paragraph (1) does not apply:
- (a) where the balance on the credit card was below £200 at any point in the 18 month period; or
  - (b) where the firm has sent a communication to the customer in accordance with paragraph (4) in the preceding 18 months in relation to the credit card; or
  - (c) where the firm is taking steps to treat the customer with forbearance under CONC 6.7.37R, is otherwise taking equivalent or more favourable steps in relation to the customer's account, or CONC 6.7.39R applies.
- (4) Where the rule in paragraph (1) applies in relation to a credit card customer, a firm must, in an appropriate medium (taking into account any preferences expressed by the customer about the medium of communication between the firm and the customer) and in plain language:
- (a) notify the customer that, in the preceding 18 months, the amount the customer paid comprised a lower amount in principal than in interest, fees and charges;
  - (b) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;
  - (c) encourage the customer to contact the firm to discuss the customer's financial circumstances and whether the customer can increase the amount of payments without an adverse effect on the customer's financial situation;
  - (d) warn the customer of the potential implications if the customer's payments comprise a lower amount in principal than in interest, fees and charges in two consecutive 18-month periods; and
  - (e) provide contact details for not-for-profit debt advice bodies and encourage the customer to contact one of them.

- 6.7.28     G     (1) For the purposes of CONC 6.7.27R, CONC 6.7.30R, CONC 6.7.34G, CONC 6.7.39R and CONC TP 8, "principal" comprises only the amount of credit drawn down by the customer under the credit card agreement, and does not include any interest, fees or charges added to the account.

- (2) The potential implications of which the *firm* should warn the *customer* under *CONC 6.7.27R(4)(d)* include the possibility that the account may be suspended, as well as any other steps that the *firm* might take, and the possible impact on the *customer's* credit file.
- (3) *CONC 6.7.27R(4)* does not specify a particular form of words to be used, and *firms* have discretion to tailor the language and tone of the communication required by that *rule* to the circumstances of the individual *customer*.
- (4) Where the *firm* complies with *6.7.27R(4)(e)*, the *firm* may in addition provide the *customer* with the name and contact details of one or more other *authorised persons* who have *permission* to carry on *debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.
- 6.7.29     R     (1) This *rule* applies in respect of a credit card *customer* to whom a *firm* is required to have sent a communication under *CONC 6.7.27R(4)*.
- (2) The steps required under paragraphs (3) and (4) must be taken:
- (a)     no earlier than nine *months* after; and
- (b)     no later than 10 *months* after,
- the date on which the requirement to send a communication under *CONC 6.7.27R* arose.
- (3) The *firm* must:
- (a)     consider the pattern of payments made by the *customer* over the period beginning on the date on which the requirement to send a communication under *CONC 6.7.27R(1)* arose and ending on the date the *firm* takes steps under paragraph (2); and
- (b)     assume that this will be representative of the *customer's* payment pattern in the entire 18-month period immediately following the date on which the requirement to send a communication under *CONC 6.7.27R(1)* arose.
- (4) If the analysis in (3) indicates that it is likely that *CONC 6.7.30R* will apply with respect to the *customer*, the *firm* must repeat the steps required under *CONC 6.7.27R(4)*.
- (5) The *rule* in paragraph (1) does not apply where the *firm* is already taking steps equivalent to, or more favourable than, those required under *CONC 6.7.37R*.
- 6.7.30     R     (1) This *rule* applies:

- (a) in respect of a credit card *customer* to whom a *firm* is required to have sent a communication under *CONC 6.7.27R* (1); and
  - (b) where the amount that the *customer* has paid to the *firm* towards the credit card balance, over the 18-month period immediately following the date on which the requirement to send a communication under *CONC 6.7.27R*(1) arose, comprises a lower amount in principal than in interest, fees and charges.
- (2) This *rule* does not apply:
- (a) where the balance on the credit card was below £200 at any point in the 18-month period;
  - (b) to any part of the balance on the credit card that has previously been subject to the requirements of paragraph (3).
- (3) A *firm* must take reasonable steps to assist a credit card *customer* who falls under paragraph (1) to repay the balance on their credit card as it stands at the end of the period specified in that paragraph more quickly and in a way that does not adversely affect the *customer's* financial situation.
- (4) The *firm* is not required to take steps under (3) or *CONC 6.7.31R* where the *firm* is already taking steps equivalent to, or more favourable than, those required under *CONC 6.7.37R*, provided that the *firm* continues to take those steps.

6.7.31 R Where a *firm* is required to assist a *customer* to repay more quickly under *CONC 6.7.30R*(3), a *firm* must contact the *customer* to:

- (1) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;
- (2) provide contact details for *not-for-profit debt advice bodies* and encourage the *customer* to contact one of them;
- (3) set out options for the *customer* to increase payments and request that the *customer*, within a specified reasonable period, respond to either:
  - (a) confirm that the *customer* will increase payments in accordance with one of the options; or
  - (b) where applicable, confirm that the options proposed are not *sustainable* for the *customer*; and
- (4) inform the *customer* that if the *firm* does not receive a response to

- the request under paragraph (3) in the time specified, the *firm* will suspend or cancel the use of the credit card.
- 6.7.32 G (1) The options a *firm* may set out under CONC 6.7.31R(3) include, for example, increasing the amount of *monthly* payments on the credit card under a repayment plan, or transferring the balance on the credit card to a fixed-sum unsecured personal loan.
- (2) CONC 6.7.31R does not prevent a *firm* from treating the *customer* more favourably, for example by writing off the balance on the account.
- (3) CONC 6.7.31R does not specify a particular form of words to be used, and *firms* have discretion to tailor the language and tone of the communication required by that *rule* to the circumstances of the individual *customer*.
- (4) Where the *firm* complies with CONC 6.7.31R(2), the *firm* may in addition provide the *customer* with the name and contact details of one or more other *authorised persons* who have *permission* to carry on *debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.
- 6.7.33 G (1) The aim of the options a *firm* sets out under CONC 6.7.31R(3) should be that the *customer* repays the balance in a reasonable period.
- (2) The *FCA* expects a “reasonable period” under paragraph (1), CONC 6.7.37R and CONC 6.7.38G to usually be between three and four years. Only in exceptional circumstances should the repayment period extend beyond four years; and even in such cases, the extension should not be significant and there should be no additional cost to the *customer* as a result of the repayment period extending beyond four years.
- 6.7.34 G References in CONC 6.7.27R, CONC 6.7.31R(3) and CONC 6.7.32G(1) to a *customer* increasing payments to the *firm* include circumstances where the amount a *customer* pays remains fixed at the same amount the *customer* was previously paying but, assuming there is no further spending on the card, represents an increase in the percentage of the outstanding principal that is repaid each *month* as the balance reduces.
- 6.7.35 R (1) Where a *customer* does not respond to a *firm's* request under CONC 6.7.31R(3), a *firm* must, at the end of the period specified in the request, suspend or cancel the *customer's* use of the credit card.
- (2) Where a *customer* confirms that one or more of the options proposed under CONC 6.7.31 R(3) is *sustainable*, but states that they will not make the increased payments, a *firm* must suspend or cancel the *customer's* use of the credit card.

- (3) Where a firm suspends the customer's use of the credit card under paragraph (1) and the customer subsequently responds to the firm's request under CONC 6.7.31R(3), the firm may withdraw the suspension if this would be in line with the other provisions in this section.
- 6.7.36 G Where a firm suspends or cancels the customer's use of the credit card under CONC 6.7.35R the firm is not, unless the customer responds to the firm's request under CONC 6.7.31R(3), required to take further steps under CONC 6.7.37R to CONC 6.7.39R. Firms are however reminded of CONC 6.7.3AR, which requires firms to take appropriate action where there are signs of actual or possible financial difficulties, and CONC 7.3.4R, which requires firms to treat customers in default or arrears difficulties with forbearance and due consideration.
- 6.7.37 R Where a customer:
- (1) confirms to the firm that the options set out under CONC 6.7.31R(3) are unsustainable; or
- (2) informs the firm that they will increase payments in accordance with one of the options proposed under CONC 6.7.31G(3) but the patterns of payments actually made under the repayment plan after it is put in place, or other indicators, show that the customer is unlikely to repay the balance in a reasonable period,
- the firm must treat the customer with forbearance and due consideration.
- 6.7.38 G (1) The steps a firm takes to treat a customer with forbearance under CONC 6.7.37R should have the aim of assisting the customer to make sustainable repayments to repay the outstanding balance in a reasonable period, and may include reducing, waiving or cancelling any interest, fees or charges.
- (2) The FCA expects that it will generally be necessary for firms to suspend or cancel the use of the credit card of a customer that the firm is required to treat with forbearance under CONC 6.7.37R with a view to ensuring the customer repays the outstanding balance in a reasonable period. This expectation does not apply, however, where the suspension or cancellation of use of the credit card would cause a significant adverse impact on the customer's financial situation, for example where the customer depends on the credit card for meeting essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills). Equally, the FCA considers that it will generally not be appropriate to withdraw the suspension of the use of a customer's credit card under CONC 6.7.35R(3) if the firm is required to treat the customer with forbearance under CONC 6.7.37R.
- 6.7.39 R Where a firm does not suspend or cancel the use of the credit card of a customer falling under CONC 6.7.30R, the firm must take reasonable steps



to ensure that the *customer* does not, in the 18-month period immediately following, repay an amount to the *firm* towards the credit card balance that comprises a lower amount in principal than in interest, fees and charges in relation to any spending on the card in this period.

- 6.7.40 G Compliance with any of the requirements in *CONC* 6.7.27R to *CONC* 6.7.39R does not remove or reduce the obligation on a *firm* to:
- (1) take appropriate action where there are signs of actual or possible financial difficulties under *CONC* 6.7.3AR; or
  - (2) treat *customers* in default or arrears difficulties with forbearance and due consideration under *CONC* 7.3.4R,
- and vice versa.

After *CONC* TP 7 (Transitional provision in relation to the Consumer Credit (Amendment No 2) Instrument 2015) insert the following new transitional provisions. The text is not underlined.

**TP 7A Transitional provisions in relation to the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
7A.1	<i>CONC</i> 6.7.2R, <i>CONC</i> 6.7.3AR to <i>CONC</i> 6.7.3DR, and <i>CONC</i> 6.7.27R to <i>CONC</i> 6.7.40G	R	A <i>firm</i> may comply with <i>CONC</i> as if the changes made by the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018 had not been made until (but not including) 1 September 2018. But where a <i>firm</i> elects, in relation to a credit card agreement, to comply before that date with <i>CONC</i> as amended by that Instrument, it must comply with the relevant provisions in full. Consequently, the time periods set out in the	1 March 2018 to 31 August 2018	1 March 2018

			<p><i>rules</i> to which this transitional provision applies are to be determined by reference to the date on which the <i>firm</i> first acted in compliance (or purported compliance) with those <i>rules</i>.</p>		
7A.2	<p>CONC 6.7.27R to CONC 6.7.40G</p>	G	<p>The effect of TP 7A.1 is that no later than 1 September 2018 <i>firms</i> must start to look back at credit card <i>customers'</i> repayment records over the preceding 18-month period and identify any <i>customers</i> that fall within the application of CONC 6.7.27R (and must thereafter continue to do so on at least a <i>monthly</i> basis). <i>Firms</i> must then send those <i>customers</i> a communication in accordance with CONC 6.7.27R(3). Between 9 and 10 months after this communication is required to be sent, CONC 6.7.29R requires <i>firms</i> to take the additional steps set out in that <i>rule</i> with respect to that group of <i>customers</i>. 18 months after this CONC 6.7.27R communication is required to be sent, CONC 6.7.30R to CONC 6.7.40G potentially require the <i>firm</i> to take the further steps described in those <i>rules</i> in relation to that group of <i>customers</i> where CONC 6.7.30R applies. CONC 6.7.30R applies only where the amount that <i>customer</i> has paid to the <i>firm</i> towards the credit card balance, over the 18-month period following the date on which the CONC 6.7.27R</p>	<p>1 March 2018 to 31 August 2018</p>	<p>1 March 2018</p>

			<p>communication was triggered, comprises a lower amount in principal than in interest, fees and charges. This means that the earliest date on which a <i>firm</i> may have obligations under <i>CONC</i> 6.7.30R is 1 March 2020 (except as mentioned below). However, <i>firms</i> are not required to delay implementation to the end of the six-month period set out in TP 7A.1: where a <i>firm</i> takes a step in compliance with one of the <i>rules</i> in question before 1 September 2018 in relation to a particular credit card agreement (for example, carrying out the 18-month review), the time for taking all subsequent steps required to be taken under those <i>rules</i> is to be determined by reference to the date of that first step, and not by reference to 1 September 2018 (or some later date).</p>		
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