

High-cost Credit Review: Overdrafts policy statement

Policy Statement

PS19/16

June 2019

This relates to

Consultation Paper 18/42
which is available on our website at
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1 Summary

- 1.1** In December 2018, we proposed radical changes to the overdraft market. In our Consultation Paper, [CP18/42](#), we set out why we considered that fundamental reform was warranted.
- 1.2** We set out our view of the harm to consumers, particularly to vulnerable consumers, from the disproportionate burden of high charges and the repeat use of overdrafts. In 2016, more than 50% of firms' unarranged overdraft fees came from just 1.5% of customers. People living in deprived neighbourhoods are more likely to incur these fees.
- 1.3** In this Policy Statement (PS) we summarise the feedback we received, and our response to it. We are going ahead with our proposals, subject to some minor changes. We are also extending the implementation period for some elements of the package, to ensure that firms have enough time to implement significant changes properly.

Who this affects

- 1.4** This document should be read by firms which provide personal current accounts. It is specifically concerned with arranged and unarranged overdrafts.
- 1.5** This document will also be of interest to consumers who use overdrafts, or might use them in future, and to consumer groups.
- 1.6** Payment service providers (PSPs) offering payment accounts that charge for refused payments should read Chapter 6.
- 1.7** Firms providing overdrafts to micro-enterprises, and firms offering products marketed to consumers as having the same function as an overdraft, should read the section in Chapter 8 regarding the application of our proposals.

Summary of our requirements including changes we have made in response to consultation

- 1.8** We are now making rules to simplify the pricing of all overdrafts and to end higher prices for unarranged overdrafts by:
- **Stopping firms from charging higher prices for unarranged overdrafts than for arranged overdrafts.**
 - **Banning fixed fees** for borrowing through an overdraft (although fees for refusing a payment due to lack of funds ('refused payment fees'), will still be permitted in accordance with the Payment Services Regulations 2017).
 - Ensuring the price for each overdraft will be a simple, **single annual interest rate** – no fixed daily or monthly charges.

- **Extending the ban on fixed fees to include overdraft facility fees** for arranged overdrafts up to £10,000.
- Requiring firms to **advertise arranged overdraft prices in a standard way**, including requiring a representative Annual Percentage Rate (APR) to help customers compare them against other products.
- Issuing new guidance to reiterate that **refused payment fees should reasonably correspond to the costs of refusing payments.**
- Requiring banks to do more to **identify customers who are showing signs of financial strain or are in financial difficulty**, and **develop and implement a strategy** to reduce repeat use.

1.9 We welcome and support an industry agreement led by UK Finance to provide consumers with standardised pounds and pence examples of the cost of borrowing through an overdraft.

1.10 Alongside this policy statement we are publishing a consultation paper, [CP19/18](#), with proposals to:

- require firms to publish representative APRs and overdraft related prices on a quarterly basis, alongside the quarterly information about current account services we already require firms to publish
- make minor changes to our competition remedies

The wider context of this policy statement

High-cost Credit Review

1.11 Consumer credit is a key part of the economy and largely works well for consumers, enabling them to buy goods and services and spread repayments over time. Most borrowers repay without difficulty and without financial distress. However, consumers can suffer harm from choosing and using unsuitable types of credit, or using the credit products they have in unsuitable ways.

1.12 We have been tackling harm in the high-cost credit market since we began regulating consumer credit in 2014. This includes interventions for high-cost short-term credit (commonly called 'payday loans'), the rent-to-own market, home-collected credit, catalogue credit, store cards and proposals for buy-now-pay-later offers.

1.13 We looked at overdrafts in detail as part of our High-cost Credit Review once the Competition and Markets Authority had completed its investigation into Retail Banking in 2016. Our aim was to examine outcomes for consumers through the set of competition and consumer protection objectives we have. Our analysis showed that fundamental reform of overdrafts was required. The changes that we are now making will introduce that reform and lead to significantly improved outcomes for millions of overdraft users.

Our consultation

1.14 In December 2018, we published [CP18/42](#) which proposed radical changes to the overdraft market. These changes were informed by our comprehensive analysis of

banks' business models, and how these are changing. Full details of this work can be found in our [Strategic Review of Retail Banking Business Models final report](#).

- 1.15** We proposed a package of remedies that would work together to address the harm we had identified. We expected that the package would result in fairer distribution of charges, with vulnerable consumers benefitting relatively more in terms of lower fees and charges than other consumers.
- 1.16** We indicatively estimated that the 30% of personal current account (PCA) consumers living in the most deprived neighbourhoods in the UK could see an aggregate reduction in overdraft charges of around £101m per year. Additionally, pricing through a single interest rate and APR disclosure will enhance price competition, which we expect will lead to better outcomes for all consumers in the long run.
- 1.17** For the purposes of the analysis we have done in preparing these interventions, we have defined vulnerable consumers as those living in more deprived neighbourhoods, based on the Index of Multiple Deprivation. Other factors which can drive consumer vulnerability are discussed in '[Our Approach to Consumers](#)'.

How this work links to our objectives

Consumer protection

- 1.18** Our package of overdraft measures is primarily intended to support our objective of achieving an appropriate degree of protection for consumers, by addressing the harm we have identified in the overdraft market.
- 1.19** The measures we are now implementing will protect consumers from high prices and unexpected charges. The pricing of both arranged and unarranged overdrafts will be fairer, and consumers will no longer incur disproportionate charges for small amounts of borrowing.
- 1.20** These measures will particularly help some of the most vulnerable consumers who incur high unarranged overdraft charges, both in absolute terms but also especially relative to their income.
- 1.21** Our new rules will also tackle the harm incurred by consumers accumulating significant charges from repeat use of what is primarily intended as a short-term credit product.

Competition

- 1.22** Our package will also promote more effective competition for overdrafts. The new rules will address the complex range of pricing structures for overdrafts across different firms, which hinder competition. Our changes will help consumers to easily compare different overdraft providers and other forms of credit and make better decisions about which products to take out, and how to use them.
- 1.23** We want firms to compete actively on their overdraft prices, as this will help to improve outcomes for consumers. Publishing APRs will increase the visibility of prices and should encourage greater competition.

Outcomes we are seeking

- 1.24** We expect that prices for unarranged overdrafts will fall significantly from current levels because of our changes. This will benefit vulnerable consumers in particular.
- 1.25** Charges for arranged overdrafts will now be directly related to the amounts borrowed and the length of time that consumers borrow for. This will eliminate the high effective daily interest rates that consumers pay when borrowing small amounts and paying fixed fees, and sometimes large changes in fees for small changes in borrowing. In some cases, effective rates charged historically are higher than the daily interest cap for High-cost Short-term Credit (HCSTC).
- 1.26** This will also mean that there is a single charge applied for any borrowing. A single charge will enable consumers to better understand the cost of different overdrafts products. Along with the other measures we are taking, this will also help consumers to understand the cost of overdrafts relative to other credit products.
- 1.27** Through our repeat use remedy, we expect to see firms engaging with customers who repeatedly use their overdraft facility, particularly those who are suffering financial harm. Over time, we expect to see a reduction in the number of consumers suffering harm through repeat use. A reduction in overall overdraft borrowing levels is likely to be a consequence.

Measuring success

- 1.28** We will evaluate the impact of our proposals and we will continue to monitor the market.
- 1.29** We will also request simple information from firms to facilitate our monitoring of the success of the remedies. We are also proposing in [CP19/18](#) that firms should publish more detailed information on the pricing of their overdrafts alongside quarterly current account services information.
- 1.30** We will carry out a post implementation evaluation of our remedies. Outcomes will take time to develop, and we would not expect to start the evaluation until at least 12 months after implementing the full package of remedies.
- 1.31** If the ongoing information monitoring, or the post implementation review, shows that our remedies have not had the impact we believe they will have, we will consider altering our remedies or making additional interventions in the market.

Equality and diversity considerations

- 1.32** We have considered the equality and diversity issues that may arise from the final rules and guidance in this PS.
- 1.33** Our assessment suggests that our final rules and guidance do not negatively impact any protected groups. Our modelling indicates that consumers who live in more deprived neighbourhoods are more likely to be net beneficiaries of our proposals.

Residents of such neighbourhoods tend to have lower incomes, are more often from black, Asian and minority ethnic (BAME) communities, and have a higher probability of being vulnerable due to poor health or disability.

- 1.34** Overall, we do not consider that the proposals will cause significant negative impacts to any of the groups with protected characteristics under the Equality Act 2010. (further details of our assessment can be found in [CP18/42](#).)
- 1.35** In line with feedback to our consultation, we encourage firms to cater for consumers who do not have access to digital channels when they are planning the implementation of our remedies.

What you need to do next

- 1.36** Please read the parts of the paper that are relevant to you.
- 1.37** We recommend that you read the whole of this document if you are a **bank or building society offering overdrafts or a trade body representing these firms**.
- 1.38** **PSPs** offering payment accounts that charge for refused payments should read the relevant section of Chapter 6.
- 1.39** If you would like to respond to consultation paper [CP19/18](#), which we are publishing alongside this PS, you can do so by 7 August 2019.

What we will we do next

- 1.40** Our revised guidance on **Refused Payment fees** takes effect immediately.
- 1.41** The **repeat use remedies** come in to force on **18 December 2019**, at the same time as our competition remedies.
- 1.42** The **pricing rules** that we are making will come in to force on **6 April 2020**.
- 1.43** Once the rules are in force, we will monitor the market and keep overdraft pricing under review.

2 Responding to general feedback on our proposed remedies

2.1 Responses to CP18/42 showed widespread support for the overall package of proposals. The feedback we received suggested that there was agreement on the positive impact the package will have on consumers, particularly those that are vulnerable.

'The FCA has rightly set out a package of reforms including price constraints and price simplification. These have the potential to dramatically reduce consumer detriment.'

- Consumer group

'We support the proposed remedies and hope that they work to ensure the desired change for lowest income consumers'

- Consumer group

2.2 Consumer groups and some individuals gave powerful and detailed accounts of the harmful effects that overdraft borrowing costs can have on consumers, negatively affecting individuals' financial position and, at times, health.

'A client in his early 60s who does not work and lives very much on the edge of poverty had a direct debit of £20 per month with his bank. The bank paid this direct debit despite the client not having sufficient funds in his account to cover it. The resulting overdraft was charged at £10 per day and the client ended up having to pay the bank £64 in bank charges. The bank could have bounced the direct debit request which would have cost the client £8. The client is now facing severe hardship and has no means of supporting himself until his next benefits payment'

- Consumer group

'AB has severe mental health problems. They are on benefits and this is their only source of income. They rely on their overdraft to pay off their credit cards every month, which has meant that it has increased to its limit of £3000. XY is being charged £83 a month for their overdraft and is falling further into debt as a result'

- Consumer group

'Many clients on low incomes are usually not offered arranged overdrafts, this means the most vulnerable especially in terms of financial security are paying more for access to credit'

- Consumer group

2.3 A number of respondents, in particular consumer groups, did however express concerns about some potential consequences of our package of remedies.

- 2.4** Some consumer groups suggested we should introduce a price cap now. Others instead asked us to keep the market under review and consider the introduction of a cap if harm continues to be seen from high prices.
- 2.5** They were concerned about reductions in unarranged overdraft income leading firms to recoup income by increasing other costs that impact personal current account (PCA) consumers (so called 'waterbed effects'). They were also concerned about the potential loss of access to credit, particularly for vulnerable consumers. The possibility of an increase in risk-based pricing in the overdraft market was also flagged as a concern.
- 2.6** A number of consumer groups and firms referenced research such as the Money Advice Service's Financial capability in the UK 2015 survey which details the difficulties that significant numbers of adults have in understanding interest rate calculation.
- 2.7** In this chapter, we set out our response to these concerns.
- 2.8** Our proposals for simplification of pricing were challenged by a significant number of firms. Whilst firms understood our desire to make pricing more straightforward, transparent and comparable, there were solutions proposed as to how these objectives could be met in different ways. Firms flagged to us concerns about the possible consequence across the market that might occur. Concern about loss of access to credit in particular was noted.
- 2.9** Firms' comments which focus on the specific elements of the package are addressed in subsequent chapters.

Our response

Cap on overdraft prices

Our package of interventions will mark a fundamental change in the way that consumers are charged for overdrafts. We are confident that the package of interventions will significantly improve outcomes for consumers therefore we do not propose to introduce a cap on overdraft prices. We expect our package to:

- Eliminate all current instances of very high effective daily rates for unarranged and arranged overdraft prices, resulting in prices significantly below the daily interest cap for HCSTC of 0.8%.
- Strengthen competition both between overdraft providers and between overdrafts and other forms of credit and ensure that the competitive pressure that constrains arranged overdraft pricing will also in the future constrain unarranged overdraft pricing.
- Lead to fairer pricing. This will particularly benefit vulnerable consumers.

While we agree with respondents to our CP that firms will seek to generate revenue through, most likely, increases in arranged overdraft prices, our package will also increase the strength of competition in the market for arranged overdrafts. We expect this will constrain any such increases to levels significantly below the caps we have set for HCSTC.

We do not expect market outcomes following full implementation of our package to warrant a cap. Furthermore, there are risks that introducing a cap on overdraft prices could have a negative impact on the market. For example, it could signal that prices at or approaching the cap are acceptable and encourage providers to set prices at a higher level than they would otherwise.

At this stage, we do not propose to introduce a cap on overdraft prices. That said, we recognise that the market may develop in ways that we do not currently envisage. We will actively monitor developments in overdraft pricing and if firms introduce pricing changes that would undermine the benefits of our intervention, we will take steps to ensure that consumers are appropriately protected.

Further details of our analysis of the effects of introducing a price cap can be found in CP18/42.

Waterbed effects

We recognised that the remedies we were proposing could create winners and losers as firms would be likely to seek to recover lost overdraft revenue from within their overdraft offering by, for example, increasing arranged overdraft prices and reducing interest-free buffers. Our recommendations were based on analysis of the net effect for consumers of the changes we considered overdraft providers might make.

We found that even if firms were to increase arranged overdraft charges for some consumers to offset reductions in unarranged charges and refused payment fees, the net effect would be better for consumers overall. This is because these changes would reduce the burden of unarranged overdraft charges and refused payment fees on vulnerable consumers, whose welfare we are particularly concerned about.

We recognise that those with heavier use of arranged overdrafts may pay more than at present. The steps we are taking to improve the transparency of overdraft pricing will help consumers to compare and understand the cost of using an overdraft, and help them understand whether other forms of credit would be better value.

In addition, to prevent harm to those who may pay more for their overdraft use, our rules require firms to identify those who will be adversely affected by any pricing changes firms make and, where appropriate, take steps to support them. Further details of this is contained in the Chapter 8 section on Transitional Arrangements.

Our repeat use remedy will also mitigate the effects of any increases in arranged pricing for heavier users as firms will be proactively contacting and supporting consumers who repeatedly use their overdraft where there are signs of actual or potential distress (see Chapter 7 below). Firms must, where appropriate, treat customers who pay more as a result of any price changes with forbearance and due consideration. This will provide an important protection for consumers who rely on using an overdraft and should prevent increased charges creating financial harm for those consumers, which includes the group referred to by some respondents as 'overdraft prisoners'.

For more details of our analysis of the possible impact of the proposed price structure changes and waterbed effects on firms' profitability, see the Technical Annex to CP18/42 [Insights from the financial analysis](#) for understanding waterbed effects. For more detail of our analysis of the impact on consumers see Technical Annex to CP18/42 - [Policy Simulation](#).

In summary, our package of measures will change the distribution of charges incurred by consumers for their overdraft use. We recognise that some consumers will pay more while others will pay less. Taking all the foreseeable changes into account, our analysis shows that the distribution of charges will be fairer than the current distribution and we have included requirements in the package that will limit the potential for any waterbed effects to cause harm to consumers.

Loss of access to credit

Loss of access to credit was also a concern raised by 2 consumer groups, and was flagged by 3 firms as a possible consequence across the market. The concerns were primarily:

- firms may reduce arranged overdraft lending to riskier consumers and/or consumers with high balances
- some consumers may face higher prices for arranged overdrafts and may be unable to afford it
- firms may remove access to unarranged overdrafts to some consumers

We consider access to **unarranged overdrafts** first.

We do not expect our pricing interventions to significantly reduce access to unarranged overdrafts for consumers. Our financial analysis showed a positive margin from supplying unarranged overdrafts. We considered the costs of providing arranged and unarranged overdrafts, and combined this with our analysis of the rates that we anticipate that firms might charge. While firms' margins for unarranged overdrafts will be lower than current levels, we expect them to remain positive, so firms will continue to have an incentive to provide unarranged overdrafts to consumers. So, we do not anticipate any significant change in access to this form of borrowing.

Some firms already provide access to unarranged overdrafts at the price of arranged overdrafts or even less. Firms have also highlighted how customers see unarranged overdrafts as a quality of service feature as much as a credit product. For these reasons, we expect firms to keep this feature, which reinforces our conclusion that we do not expect a significant reduction in access to credit.

Our repeat use remedies require firms to identify, and to deal appropriately with consumers who use overdrafts repeatedly. We would expect firms to take appropriate steps where this is identified, which could include limiting access to unarranged overdrafts where this would not cause financial hardship. This could lead to a reduction in some consumers' access to unarranged overdrafts. While this would be a reduction in access to credit, we expect this reduction would not happen unless it was in consumers' interests.

Looking next at **arranged overdrafts**

A widespread and harmful loss of access to credit resulting from an increase in arranged overdraft pricing is unlikely. Higher prices for arranged overdrafts could increase access to overdrafts for some consumers with poorer credit risk, subject to their passing creditworthiness assessments. Where our package of remedies leads firms to reassess credit limits, we would also expect firms to pay due regard to their customers' interests and treat them fairly. Fair treatment should ensure that any reductions in credit limits do not create harm to those consumers.

In developing our proposals for consultation, we also looked at whether overdraft users would have alternative sources of credit if they lost (even partially) access to overdrafts. [Our analysis in CP18/42](#) indicated that most overdraft users have access to alternative and often cheaper forms of credit. We concluded that if an unlikely loss or restriction of access to overdraft happened, the vast majority of consumers could use alternative sources of credit.

We do not think that the risk of reduction in access to credit requires us to make any change to our proposed interventions. We will monitor the impact of our changes on access to credit, in particular, through our review and supervision of firms' strategies to identify and support repeat users showing signs of actual or potential financial harm.

Risk-based pricing

The re-introduction of risk-based pricing to the overdraft market was also raised as a concern by several consumer groups.

Pricing for risk is a standard practice in lending, and is evident in the personal loan and credit card lending markets among others. Most firms currently use a single price point for their entire overdraft book, or restrict differentiation to different charges on different PCA products. However, they also use other aspects of the overdraft product to manage risk, particularly the level of credit availability across the product. We expect the management of credit limits across products to continue to be the primary tool firms use to manage overdraft risk.

Lending to higher-risk borrowers generates additional considerations for the lender, and consequently additional costs compared to lower-risk customers. Preventing risk-based pricing could reduce customers' access to credit, as some higher-risk customers could not be served in a commercially viable way.

We do not propose to make any changes that would limit the scope for firms to introduce risk-based pricing. We will monitor developments in the market, considering the issues highlighted in our work on [Fair Pricing in Financial Services](#) when considering any changes to overdraft pricing.

Financial literacy

While significant numbers of consumers say they find interest rates and representative APRs harder to understand than charges in pounds and pence, the pricing of financial products by way of interest rate and APR is normal practice, with products such as mortgages, personal loans and credit cards all priced in this way. Pricing this way also has advantages:

- interest rates avoid steep increases in charges for small changes in behaviour
- our research showed consumers recognise when one interest rate or representative APR is higher than another and can identify the cheaper deal

- they can compare representative APRs for overdrafts with other products
- overdraft calculators and pounds and pence examples can help consumers to translate interest rates to understand them in pounds and pence

Reform of overdraft pricing

We want to make the market work well for consumers and we are fundamentally reforming overdraft pricing to make it fairer. We are also issuing guidance to reiterate that refused payment fees should reasonably correspond to the cost of refusing payments and explain what this means in practice.

Some respondents have called for redress in relation to historic charges. Our focus is to ensure that firms review and implement our new rules and guidance. We will monitor overdraft prices and refused payment fees, and we will take appropriate action if we see evidence of harm.

3 Aligning arranged and unarranged overdraft prices

3.1 In this chapter, we summarise the main responses we received to the questions we asked in Chapter 4 of CP18/42. We also set out our feedback. We have made the rules as proposed to align the prices of unarranged overdrafts with those of arranged overdrafts.

Background

3.2 In CP18/42, we set out our proposals to tackle one of the drivers of harm we had identified in the overdraft market - the high cost of unarranged overdrafts.

3.3 We proposed that all firms make any charges for using an unarranged overdraft the same as (or less than) charges for using an arranged overdraft.

3.4 For accounts without arranged overdraft facilities, unarranged charges should be no more than charges for an arranged overdraft provided by the same firm on a sufficiently comparable account.

3.5 Further, if an unarranged overdraft charge is imposed in breach of our rules for alignment, we proposed that the obligation to pay the charge is unenforceable against the customer and that, if the customer has paid the charge, they would be entitled to have it refunded.

3.6 Alignment would provide a market-based mechanism to constrain unarranged overdraft prices, ensuring that the competitive pressures that constrain arranged overdraft prices would extend to unarranged overdrafts. This element of the package will introduce protection for consumers against the harm we have observed from high unarranged overdraft prices.

3.7 We are now making the rules on alignment without any change following consultation.

Feedback received

3.8 Overall, our proposals were welcomed by firms and consumers groups. Both groups agreed with our proposals that firms align the charges for arranged and unarranged overdrafts. Respondents also broadly agreed with our analysis that rules on alignment should not allow firms to charge more for unarranged overdraft use (there should not be an uplift for unarranged prices) and supported our proposals that charges for unarranged overdrafts should be unenforceable if their level exceeds the level of arranged charges. We set out the detailed feedback received and our response below.

3.9 In CP18/42 we asked:

Q1: *Do you agree with our proposal to align the charges for arranged and unarranged overdrafts?*

Q2: *Do you agree with our analysis that our rules on alignment should not allow firms to charge more for unarranged overdraft use (no uplift)? If you disagree with our analysis, please provide evidence outlining the additional costs an uplift is required to cover and the level of uplift required.*

Q3: *Do you agree with our proposal that charges for unarranged overdrafts should be unenforceable if their level exceeds the level of arranged charges?*

- 3.10** Overall, our proposals received widespread support.
- 3.11** Some of the concerns expressed about the package overall (see Chapter 2) were also raised in relation to the specific feature of alignment.
- 3.12** Several respondents raised concerns about possible unintended consequences of alignment such as an increase of prices across the board for consumers (waterbed effects). Some consumer groups believed that the introduction of greater risk-based pricing would be an unintended consequence of overdraft pricing alignment. These respondents believe that risk-based pricing will allow banks to financially discriminate against the most vulnerable consumers, and called on the FCA to ban the practice.
- 3.13** While supporting our proposals for alignment, several respondents argued that we should do more to strengthen our interventions and reduce the harm to vulnerable consumers. A number of consumer groups reiterated their view that the most effective way to protect vulnerable consumers is the full implementation of a cap on overdraft charges.
- 3.14** One firm and a trade body did not agree with the proposed lack of differentiation between arranged overdraft and unarranged overdraft borrowing. The firm argued that unarranged borrowing costs more in terms of administration with a bespoke process and contact strategy to provide additional support for customers. But they did not provide evidence outlining the additional costs any uplift would be required to cover, nor any details of the level of uplift they felt would be appropriate.
- 3.15** Several consumers did not support our plans for alignment. They supported firms being able to price unarranged overdrafts on a higher rate to arranged. Other individuals and consumer groups gave their support for alignment, giving examples of problem debt starting from small unarranged overdraft balances.
- 3.16** One industry body called for further clarification on the implementation period. They asked whether unarranged overdraft charges accrued in a charging period before the new rule comes into effect but which are applied to the customer's account after that date would be in contravention of the new rule.
- 3.17** Our proposal that charges for unarranged overdrafts should be unenforceable if they exceed the level of arranged charges also met with broad support. One firm believed that this additional measure should not be necessary with our rule on alignment providing a clear requirement for firms to follow. Several consumer groups felt that we should go further with our interventions.

Our response

As our proposals have received widespread support, we have made the rules as set out in CP18/42. Firms will need to align the price of unarranged overdrafts with that of arranged overdrafts. The price of using an unarranged overdraft can be lower but cannot be higher than that of using an arranged overdraft.

Waterbed effects

We recognise that the interventions we are making could potentially have unintended consequences. As overdrafts sit as one part of wider PCA offerings, any reduction in revenue in one part of the PCA could lead to an increase in prices elsewhere. As our proposals would constrain prices for unarranged overdrafts, we expect firms will seek to recover the lost revenue, in particular through higher arranged overdraft pricing.

Our analysis of potential waterbed effects is covered in Chapter 2.

Despite the waterbed effects, alignment of unarranged overdraft prices with those of arranged will lead to a fairer distribution of charges, with particular benefits for vulnerable consumers.

Use of unarranged overdrafts

Our proposed pricing interventions are unlikely to result in an increased use of unarranged overdrafts. Our evidence suggests that firms will continue to offer broadly similar unarranged overdraft facilities. Consumers will be reluctant to use more unarranged facilities because of the risk of payments being declined and potentially incurring refused payment fees.

Risk-based pricing

Some respondents would like us to ban risk-based pricing within the overdrafts market. Our response is set out in Chapter 2.

Pricing for risk is a fundamental part of lending practice and we will continue to permit it. We will monitor the market to ensure that unforeseen unfair pricing practices do not emerge.

Price cap

We have considered responses that suggest we should directly cap overdraft prices as well as (or instead of) requiring them to be aligned. Our response is included in Chapter 2. In summary, we consider that alignment of unarranged with arranged overdraft prices will provide an effective constraint on unarranged overdraft prices, and that our package of remedies will deliver better outcomes than a price cap.

We will monitor this market and keep overdraft pricing under review. We will consider introducing a price cap in this market if rates increase significantly above our expectations.

Differing costs of arranged and unarranged borrowing

A small number of respondents did not share our approach to alignment on the basis that unarranged overdraft borrowing requires bespoke

processes and contact strategies to provide support to customers, so producing different cost calculations.

We saw limited differences in the cost of providing arranged and unarranged overdrafts. Those differences in cost that the banks have quantified do not justify the much higher prices for unarranged over arranged overdrafts. Figure 3.1 of CP18/42 showed that unarranged overdrafts represented 26% of total overdraft income between 2014 and 2017, but only 4% of total overdraft lending assets.

We have consistently found it difficult to get reliable or complete information from firms on the potential cost differences between issuing arranged and unarranged overdrafts. No evidence of additional costs was provided by respondents to the CP, nor was any detail provided of the level of uplift that the respondents felt to be appropriate.

Firms remain free to set prices so that neither arranged nor unarranged overdrafts become loss making.

Implementation – accrued charges as at implementation date

Our remedies will only apply for charges accruing after the rules come into effect, not those that accrue before the new rules are implemented, but are applied later. This is made clear in the Consumer Credit Sourcebook (CONC) 5C.3.3G (3).

Proposal to make charges unenforceable

We have considered the comments made by firms and consumer groups. We believe that making unarranged borrowing charges unenforceable if they exceed the level arranged borrowing charges is a proportionate response to the harm currently seen in unarranged pricing.

4 Simplifying pricing

- 4.1** In this chapter, we summarise and respond to the feedback we received to our proposals to price all overdrafts by a single, simple interest rate. We will require the interest rate to be shown as an annual rate.
- 4.2** We have made rules that firms must price overdrafts using an interest rate.
- 4.3** We have also made a rule that prevents firms from charging fees for arranging overdrafts of up to £10,000.

Background

- 4.4** In our consultation, we set out our proposals to tackle complex pricing structures, identified as a driver of harm in the overdraft market.
- 4.5** Our proposed rules were:
- A requirement that firms charge for overdrafts using an **interest rate** charged on the total amount borrowed, and expressed as a percentage.
 - **A ban on tiered pricing** which would mean that firms must charge the same interest rate regardless of the amount borrowed. Firms would still be allowed to have an interest free amount or 'buffer', provided this amount remains interest free even if the customer exceeds it.
 - A single interest rate would be charged on each individual account offered. Our proposals would allow for variation in interest rates between different account types or even different customers. Neither different tiers within a single account nor different prices for different types of arranged overdraft within the same account would be permitted.
 - Price simplification would effectively **ban all fixed fees** for borrowing under an arranged overdraft. As firms would be required to charge for unarranged overdrafts in the same way they charge for arranged overdrafts, monthly usage fees and allowed payment fees would be prohibited.
 - Firms would still be permitted to charge an account maintenance fee, whether an overdraft is used or not.
- 4.6** We found that interest based overdraft charging structures (presented with an APR) are more easily comparable and clearer than certain daily pricing structures.

Feedback received

- 4.7** In the consultation, we asked:

Q4: *Do you agree that firms should be required to charge for overdrafts by a single interest rate?*

- 4.8** We received mixed feedback on our proposals to require single interest rate pricing. Consumer groups were almost unequivocally supportive, but some groups expressed concern that risk-based pricing could lessen the impact of the proposed package of remedies on more vulnerable consumers. It was also highlighted that risk-based pricing could undermine competition. These concerns were shared by 1 firm which asked us to review the market after 12 months.
- 4.9** Consumer groups highlighted that a single interest rate allows consumers to more easily compare the cost of borrowing across the market, highlighting that charges are complex, not transparent and difficult to understand. The variety of charging structures was not seen as evidence of competition in consumers' interests but rather as evidence of making prices unclear. The ban on tiered pricing was welcome, as tiering was seen to add complexity to products. Concerns around financial literacy, and the understanding of percentages, were expressed by some consumer groups.
- 4.10** One consumer advocate expressed support for a flat daily fee model accompanied by a monthly cap, arguing that this brings certainty and consumers struggle with percentages, acknowledging this would make smaller overdrafts more expensive.
- 4.11** Firms had mixed reactions, with some firms expressing support and others expressing a preference for other pricing models and more flexibility in pricing. Some firms suggested measures for increasing the transparency of existing pricing structures while retaining the underlying charging structures. These suggestions included presenting an APR at different points along the customer journey, and the development of common scenarios that could be used by consumers to compare products.
- 4.12** One firm suggested we continue to permit facility fees to allow for cost recovery for customers who have, but do not use, an arranged overdraft facility. The firm argued that facility fees would allow non-borrowing overdraft costs such as origination, capital and fixed costs to be more evenly shared across all customers who benefit from having an arranged overdraft facility. This would allow for lower arranged overdraft rates, benefiting borrowers, who cover the cost of providing overdrafts.

Further consumer research

- 4.13** We undertook additional consumer research, to better understand how consumers view overdraft pricing models and the reasons for this.
- 4.14** We looked at existing pricing models, including one using a single interest rate, and compared these to a pricing model that complied with our proposals in their entirety.
- 4.15** The existing pricing models were looked at with and without the display of APR and pounds and pence examples. The model based on our proposals (including the industry agreement on pounds and pence illustrations), displayed a single interest rate (using an Effective Annual Interest Rate (EAR)), an APR and examples of the cost of borrowing in pounds and pence for £250, borrowing for a week, 10 days and a month.
- 4.16** Participants were asked to complete a short pre-group questionnaire to provide high-level quantitative insight. This was followed by 7 condensed focus groups. The total sample was 68 individuals.

4.17 The outputs from the research emphatically supported findings from our previous studies, namely:

- Consumers overwhelmingly preferred the model based on our proposed package of remedies.
- Consumers like the certainty, proportionality and comparability of an interest rate.
- Consumers readily use APR as a benchmark, which helps them compare the cost of borrowing on an overdraft with alternatives such as credit cards.
- Consumers like the certainty of pounds and pence examples and want these to be standardised across industry, easily scalable and to show the cost of borrowing for a day, a week, a month and year.
- Although consumers liked the inclusion of an annual interest rate, they were not familiar with EAR as a description of this.
- When asked whether they prefer the interest rate expressed as an annual, monthly or daily percentage rate, we found that some consumers anchored onto the daily and monthly rates. Focussing on low numbers quoted in daily and monthly rates caused consumers, in many cases, to wrongly believe that rates were cheaper than effectively similar rates which had been quoted on an annual basis.

Comments from consumers

“It’s easy to get tripped up because of the ways different banks present things, it would confuse people”.

“What I don’t understand is, you should feel reassured when you’re taking out an overdraft and yet they’re unnecessarily complicated, there are so many different definitions and maths involved and it should really be made a lot clearer and a lot more concise, so the customer understands what they’re getting into”

“...but the APR is your guide, it’s like a restaurant star rating, it’s the one thing that you can gauge your payments by”.

“Don’t bamboozle us or confuse us by adding things in that we don’t necessarily need to know about, so keep it simple”.

Our response

Alternative pricing structures

We are not persuaded by firms’ arguments that they can sufficiently improve the transparency and comparability of their charging structures by adding APR at points throughout the customer journey, providing common customer scenarios or other additional information provision.

Fixed fee charging structures are not easily comparable to other charging structures (including other fixed fee ones). Fixed fee tiered charging structures can be unpredictable to consumers. Small changes in the amount borrowed can result in significant increases in the cost of borrowing. Additional features suggested by firms to lessen the effects of this would risk adding to the complexity of such models.

Pricing models that are proportional within a pricing tier are potentially less harmful than models where prices are fixed within tiers. However, these models still add considerable complexity and make it harder for consumers to compare and understand the cost of borrowing even where an APR is disclosed. Compared with single interest rate pricing, these models can also, proportionally, be more expensive for customers who have overdraft limits within the lower tiers.

Pricing models which express the cost of borrowing in the form of a charge of 1p for every x pounds borrowed have the benefit of being proportional. However, our consumer research showed that many consumers anchor on the charge being 1p, without realising the cumulative effect of these charges or being able to compare the cost of their overdraft to credit alternatives. Anchoring is the human tendency to place more weight on the first piece of information offered than everything that follows. This can influence the way people interpret the following pieces of information and form a conclusion.

We believe that the complexity of current products is causing harm and this cannot be addressed if we continue to allow differentiated charging models.

In our consumer research, we found that consumers prefer a charging model with a single interest rate, an APR and standardised pounds and pence examples, as it allows them to compare with other overdrafts and credit products. They preferred this combination of single interest model and information to examples they were shown using other existing pricing models supported by an APR and pounds and pence examples.

We believe this model will offer simplicity and clarity to consumers. The single interest rate will ensure that the cost of borrowing is proportionate to the amount borrowed. In combination with our other remedies it will enable consumers to more easily work out and compare the cost of borrowing.

Expressing interest rate as an annual percentage

CP18/42 proposed that the interest rate must be expressed as a percentage. We are modifying this proposal to more specifically require the single interest rate to be expressed as an annual percentage. Under our original proposals, the interest rate could have been shown as a daily, monthly or annual rate. By making the interest rate an annual percentage, we will ensure consistency across the market, and avoid the anchoring effects of a daily or monthly percentage rate, which could lead consumers to inadvertently compare those rates with annual rates advertised by other providers. This does not prevent charges from being applied to the account on a daily or monthly basis, but it does aid comparison.

The industry standard for an annual interest rate is the EAR, which takes account of compounding. We encourage all firms to show the cost of their overdraft in the form of an EAR.

Our consumer research found that consumers are more familiar with the concept of an APR than they are with the EAR. In the interest of consumers, we encourage industry to take action to make EAR more familiar as a description of an annual interest rate. Firms are reminded of the guidance in CONC 3.5.6G (2) that, where an agreement provides for compounding of interest, the rate of interest in the representative example in a financial promotion should generally be the EAR and, if a firm uses a different rate, it must explain this to the customer, so that the customer is clear whether, and to what extent, the rate used is comparable with rates shown by other lenders.

Facility and arrangement fees

To ensure simplicity, and to prevent the emergence of charges which are unrelated to use, we propose extending our ban on fixed fees to include fees levied for arranging or maintaining overdraft facilities of up to £10,000. These fees are often referred to as facility fees or arrangement fees. These fees are not common in retail banking at present, but a possible consequence of our pricing simplification proposals may be that firms might look to introduce such fees. Like other fees which are not proportional to the usage of the overdraft, facility fees would make it more difficult for consumers to understand and compare the true cost of using an overdraft.

We recognise that there is a small segment of typically affluent consumers with more bespoke overdraft arrangements, where firms might also incur higher underwriting costs. With this segment in mind, we are continuing to permit facility and arrangement fees for agreed overdraft facilities above £10,000. This corresponds to 0.1% of all PCAs with an overdraft facility. Our analysis suggests that only one firm currently charges facility fees for overdrafts below this threshold.

We are not banning fees for having an account. Such fees are normally referred to as account fees or packaged account fees. (If an overdraft cannot be accessed on equally favourable terms on an account where the account fee is not payable, then the account fee will require to be factored in to the representative APR.)

Daily application of charges

One firm suggested that applying fees daily rather than monthly improves consumer engagement. Firms take different approaches to the application of fees and our overdraft alerts are designed to make consumers aware of how they use their overdraft. If a firm has found that applying fees daily leads to better outcomes for its customers, our rules would allow it to continue doing so.

Potential adverse consequences

Other concerns raised around the potential adverse consequences of our proposals are addressed in detail in Chapter 2.

5 Display of APR

- 5.1** In this chapter, we summarise the main responses we received in relation to our proposals for the use and display of APRs, and set out our feedback to the comments received. We have made the rules as proposed.

Background

- 5.2** In Chapter 4 of CP18/42, we proposed that firms disclose, in some advertising, the representative APR for their arranged overdraft products. This will allow consumers to compare easily and for firms to compete on a meaningful headline price.
- 5.3** If firms charge different interest rates to different customers (risk-based pricing), the representative APR is the APR at, or below that, a firm reasonably expects that credit would be provided to at least 51% of those applying for credit as a result of the financial promotion.
- 5.4** In relation to overdrafts, Member States have discretion under the Consumer Credit Directive (CCD) to require an APR within the representative example, or to require it in advertising even where the full representative example is not triggered. We proposed to remove the current exemption of overdrafts from APR requirements applying to other types of credit, because the changes we proposed to overdraft pricing make a representative APR a more reliable comparator. Firms will now have to include a representative APR within the representative example required in advertising referring to the cost of the overdraft, as well as in other advertising that triggers the need to include an APR. This includes in comparative advertising, and promotional offers including incentives to apply for an overdraft.
- 5.5** We asked:

Q5: *Do you agree that we should require firms to disclose the representative APR in advertising where the representative example or representative APR is triggered?*

Feedback received

- 5.6** Most respondents supported our proposals requiring firms to disclose the representative APR in advertising where the representative example or the representative APR is triggered.
- 5.7** A number of consumer groups supported our proposals on the basis that disclosing APRs in advertising may help in the reframing of an overdraft as debt akin to loans or credit cards.
- 5.8** Several consumer groups were concerned that vulnerable consumers would routinely be offered a significantly higher APR on their overdraft than the representative rate

advertised. One individual respondent also provided extensive examples of the potential for firms to use representative APRs in advertising that might not be available to a significant number of consumers. There was particular concern expressed by consumer groups about heavy overdraft users who might not be able to shop around as easily for the lowest cost offer due to their level of debt.

- 5.9** A number of firms highlighted the limitations of representative APRs and had concerns both around consumer understanding of the calculation and also around the possible unintended consequences of using representative APRs as the basis for decision making. The concerns about consumer understanding were shared by a small number of consumer representative groups.
- 5.10** Firms had particular concerns around the potential erosion of additional benefits provided with packaged accounts if account fees have to be brought in to the APR calculation.
- 5.11** There was also concern from some firms that consumers might be prompted to choose overdraft providers on the basis of APR alone and would not consider other relevant aspects, such as service, in their decision making.
- 5.12** Two firms did not support the publication of a representative APR on the basis that displaying a representative APR would confuse consumers and not necessarily aid accurate comparability between products and providers. The firms highlighted, in particular, that APR could be misleading as it is based on a relatively high amount of borrowing (£1200) over 3 months, whereas overdrafts are typically used to borrow small amounts over short periods.
- 5.13** Two firms and a number of consumer groups suggested that the inclusion of APRs could be extended to other points in the overdraft customer journey, to further boost comparability between providers.
- 5.14** Other firms suggested alternative ways of helping customers to fully understand the cost of their overdraft and compare products, such as developing suites of common customer scenarios, or representative examples that each firm could use.

Our response:

We remain convinced that APRs are an appropriate tool to allow consumers to compare overdrafts prices and for firms to compete on a meaningful headline price so have made the rule as proposed.

Our consumer research shows that consumers are familiar with APRs as a measure of the cost of borrowing. Many can judge that a representative APR of 50% is more expensive than the APR they would expect to see for a credit card or loan. A full understanding of how the APR is calculated is not expected or required by consumers to use an APR as a comparison tool.

Product comparison

Displaying the APR is part of an overall package to help consumers compare credit products and providers - and will work together with the use of single interest rate pricing (Chapter 4), and the industry agreement on the display of pounds and pence examples (see Q9). APR disclosure helps consumers better understand the potential cost of their borrowing and makes it easier to compare the cost of their overdraft with alternatives such as overdrafts provided by other banks or credit cards.

We recognise that the cost of an overdraft is only one element that consumers should consider when choosing a current account. Our remedies are designed to provide more clarity on the cost of the overdraft. Including overdraft costs within the existing current account services information data that larger firms are required to publish would increase the pool of information which is easily available to consumers to help them choose the most appropriate provider for them. See also comments below and [CP19/18](#).

Offering rates differing from representative APR

We understand the concerns raised that consumers, who are seen to pose a higher credit risk, might be offered a significantly higher APR on their overdraft than the representative rate advertised.

We proposed in CP18/42 that firms notify us each year of the representative APRs they have used in financial promotions for each of their current account products.

In view of the feedback to CP18/42, and to further increase the awareness of firms' pricing, we are proposing that firms publish overdraft pricing information.

Our response later in this chapter to Q8 of CP18/42 explains that we are consulting on a requirement for firms to publish representative APR details on their websites alongside quarterly information about current account services. We are also proposing to require publication by firms of the arranged and unarranged borrowing rates and refused payment fees to further aid comparability. (More detail is given in [CP19/18](#)).

APR display at other points in the customer journey

We are not proposing to require the APR to be provided at other points in the consumer journey. However, inclusion of the APR in documents such as statements, or internet banking and mobile banking platforms could be beneficial by helping existing overdraft customers to fully understand the cost of their borrowing, reducing friction when comparing to alternative products and further positioning overdrafts as debt. We would encourage firms to consider the voluntary addition of APR information to such documents.

APR calculation

- 5.15** In CP18/42, we proposed guidance on how firms should calculate a representative APR for arranged overdrafts which offer unconditional interest free amounts.
- 5.16** We stated that the representative APR should reflect the cost to the customer of borrowing the representative amount. Where charges only apply to any borrowing above an interest-free amount, this reduces the representative APR when compared to an identical overdraft but without an interest-free amount.
- 5.17** We also proposed to add guidance on how personal current account maintenance fees should be treated when calculating the APR for overdrafts. If a customer cannot obtain an overdraft on the same terms without incurring a fee, the fee should be included in the APR calculation.

5.18 We asked:

Q6: *Do you agree with our proposed guidance to help firms to calculate APR consistently?*

Feedback received

- 5.19** Most respondents supported our proposed guidance to help firms calculate APRs consistently. The requirement for consistency of approach between firms was highlighted by many firms in their CP response.
- 5.20** A number of firms are sought further clarification on various aspects of the proposal.
- 5.21** There were particular challenges raised to our guidance on interest-free buffers by a small number of respondents, who argued that:
- including interest-free buffers could confuse and mislead consumers
 - our approach could encourage firms to incorporate interest free buffers into their offer as a means of lowering the representative APR
- 5.22** There were also concerns from a number of firms about the treatment of packaged account fees. Firms argued that the representative APR of a packaged account with an overdraft facility would not accurately capture the additional benefits included with the account package.
- 5.23** Some respondents challenged whether an APR is appropriate for a facility designed for short term use. Some firms expressed the view that there were significant unintended consequences of using representative APRs if the amount of borrowing, repayment term and repayment schedules of the debt varied.
- 5.24** A number of respondents asked for further clarification of specific situations, including:
- inclusion of account maintenance fees in the calculation, particularly when the fee could be waived in certain situations, eg if credit turnover criteria are met each month, or when the account is kept in credit each month
 - treatment of account fees charged annually
 - assumptions to be made in terms of the application of interest to fee payments
 - student accounts with interest free arranged overdrafts, but charges for unarranged borrowing
 - treatment of introductory offers that last longer than 3 months

Our response

We remain of the view that representative APRs will assist consumers in their understanding of the relative cost of using an overdraft. APRs will also help them to compare the cost of their overdraft with other credit products. So, we will implement the rules as proposed.

The rules for calculating overdraft APRs are set out in CONC. The APR is a benchmark intended for the comparison of similar financial products. It is calculated based on the actual charge that a consumer would incur for borrowing

a representative amount (typically £1,200) for three months and therefore includes the effects of buffers and certain account fees on the total charge for credit.

Where there is no interest free buffer and consumers need to pay an account fee to access an overdraft facility, the APR would be higher than the single interest rate (EAR) charged for using the overdraft. However, where firms offer an interest free buffer but there are no account fees, the APR would be lower than the EAR. The APR will always represent the charge for credit, whether or not there is a buffer and/or an account fee. However, we disagree with the view that these effects would mislead consumers into having a distorted view of the actual cost of borrowing via an overdraft.

We have provided some worked examples in the box below to help firms interpret the regulations consistently.

Illustrative APR examples

This box illustrates the concept of representative APR for different scenarios to show how buffers and monthly account fees affect the APR. We have made simplifying assumptions and have used an overdraft of £1,200 as a typical example.

All scenarios are shown for the same simple monthly interest rate of 1.38%, where charges accrue daily and are applied on the last day of the month. This corresponds to an annual compound rate of 17.9% EAR. For scenarios with account fees we have assumed that the fee is applied at the end of the month and that it is interest bearing. Months were assumed to be of equal length.

Product A - is an overdraft product with no interest free buffer and no monthly account fee.

Product B - an overdraft product with an interest free buffer.

Product C - is an overdraft product provided on an account which charges a monthly account fee. In case 1 in the table, paying the account fee is a condition of obtaining the overdraft and needs to be included in the total charge for credit. In case 2, the account fee is not a condition of obtaining the overdraft, as the customer could obtain the overdraft on the same terms, without a fee, by choosing Product A. In this example, the account fee does not influence the total charge for credit.

	Product A	Product B	Product C Case 1 - if NOT offered alongside Product A	Product C Case 2 - if offered alongside Product A
Amount	£1,200	£1,200	£1,200	£1,200
EAR	17.9%	17.9%	17.9%	17.9%
Interest free buffer	£0	£200	£0	£0
Monthly account fee	£0	£0	£3	£3
Total charge for credit for 3 months	£50.37	£41.97	£59.49	£50.37
APR	17.9%	14.7%	21.4%	17.9%

APR display

- 5.25** Disclosing a representative APR where there is a relevant trigger is intended to help consumers to compare the cost of credit between different overdraft providers and other products such as credit cards. Our existing rules (CONC 3.5.5R) require the representative example (which we now propose will include the representative APR in the case of arranged overdrafts) to be clear, concise and prominent. CONC 3.5.7R also requires that the representative APR be prominent.
- 5.26** Each item in the information within the representative example must be given equal prominence. The representative APR must be given no less prominence than other information about the cost of credit or any other representative APR trigger in the financial promotion.
- 5.27** Consumers are not used to seeing an APR for their overdraft and often do not consider overdrafts as debt. To make it clear we proposed firms would include the title 'How does our overdraft compare?' and explain that the APR allows customers to compare the cost of the overdraft with other providers or with other types of borrowing.

Feedback received

- 5.28** We asked:

Q7: *Do you agree that in addition to existing rules in CONC regarding the disclosure and prominence of the representative example and representative APR, we should require firms to include the title 'how does our overdraft compare' and explain that representative APR can help consumers compare the overdraft?*

- 5.29** Most respondents were in favour of our proposals around disclosure of the representative APR, with some noting that our proposals would increase transparency around overdraft advertisements in comparison to other forms of debt.

- 5.30** Two firms agreed with the aim of the proposals, but requested more flexibility in the way they could effectively use available space in different advertising channels, for example requesting that firms could display a full representative example within 'one click' of banner-style adverts that only display the representative APR.
- 5.31** A small number of firm respondents disagreed with our approach, arguing that the addition of further disclosure requirements may end up diluting existing important disclosures.
- 5.32** Consumer groups were generally supportive of the proposal with some underlining the need for the FCA to be prescriptive in its rule on prominence to ensure that firms are unable to take substantially different approaches on how this information is shown.

Our response:

We welcome the support given from industry to our proposal around APR display.

Display of APRs continues to be a key part of our overall package of remedies with its role primarily being to aid comparability of products and providers.

Our consumer research continues to support the view that consumers value the help that the APR can give when making comparisons.

We believe that it is particularly important that the representative APR in overdraft advertising is displayed consistently. Any explanations should be provided coherently alongside the representative APR.

We have made the rule as proposed.

APR reporting

- 5.33** In CP18/42, we proposed firms report to us annually, for each of their PCAs, the representative APR they have used in financial promotions. If firms advertise different interest rates, for different customers or at different times, we proposed to require them to tell us the highest, lowest and median representative APR they have used in a financial promotion. We noted that we may publish this information on our website.

Feedback received:

- 5.34** We asked:

Q8: *Do you agree that firms should report to the FCA information about their representative APR and that we should publish this information?*

- 5.35** Most respondents support our proposals to require firms to report their APR offering.
- 5.36** Consumer body respondents were generally of the view that publishing the rates to the public will exert competitive pressure on firms to offer more competitive rates for customers and would help promote transparency about costs of borrowing between different providers.
- 5.37** A number of predominantly firm respondents requested further clarification as to the intended use of the published data, including the intended target audience. One firm argued that consumers are unlikely to consult the FCA's website for comparison information and recommended that we require firms to direct customers to price comparison websites instead.
- 5.38** A respondent cautioned against publishing historical data that might be misinterpreted by customers as indication of current pricing. Another suggested that the APR be published for both front-book and back-book customers to avoid misleading back-book customers into switching to more expensive front-book rates offered by another provider.

Our response

Improving transparency and comparability is a key part of our package of remedies.

As such, we believe it is important that representative APR details are easily accessible by consumers.

Concerns that the representative APR might only be applicable to 51% of applicants also have to be addressed.

As covered in our response to Q5, we are consulting (in [CP19/18](#)) on proposals to extend our requirements on APR publication to require firms to publish, by brand and product, their representative APRs, in terms of the highest, lowest and median rates, on their websites alongside quarterly information about current account services.

Providing representative APR information, along with unarranged prices and refused payment fee levels as part of the current account services information will help consumers, comparison websites and the media make meaningful comparison of the services and overdraft products provided by PCA providers.

We believe that the proposals we are consulting on in [CP19/18](#), with firms publishing a range of representative APR details (and other overdraft price information) on their websites will provide a better solution to the issue of improving comparability than our proposal of reporting representative APR details to the FCA. If this revised proposal is supported during consultation, we will not progress the requirement for APR details to be reported to us. We are not making a rule requiring firms to report to us annually at this point.

Looking ahead, we would like to work with the Money and Pensions Service to increase further the number of places that representative APR details and other overdraft costs, are published.

Pounds and pence disclosure

Background

5.39 In CP18/42 we said that we would work with firms via UK Finance during the consultation period to pursue an industry agreement on pounds and pence disclosure. Consumer research we had conducted found that consumers understood an example similar to the one below:

Can you give me an example in pounds and pence?

You can use our calculator to work out what our overdraft charges mean you will pay in pounds and pence for other levels of borrowing or periods of time.

As an example, if you borrow £500 it will cost you:

£0.25 for 1 day	£1.75 for 1 week	£7.77 for 1 month	£93.24 for 1 year
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Summary of feedback received

5.40 In CP18/42 we asked:

Q9: *Do you agree that it would be helpful for firms to give consumers a clear example showing what an overdraft might cost in pounds and pence if they borrowed money for a period of a day, a week, a month or a year?*

5.41 Consumer groups and firms gave almost universal support to the statement that consumers would benefit from pounds and pence disclosure. Consumer groups saw the display of pounds and pence as a key part of helping consumers really understand how much their overdraft could cost them, noting that many consumers still don't view overdrafts as being debt. Many saw the display of pounds and pence as having the potential to change the behaviour of consumers.

'Whilst clients tend to use overdrafts over long periods of time, they think of overdrafts on a monthly basis. It is only when an adviser states that the client's overdraft with fees and charges added on actually costs £x amount over the year, that clients take notice.'

- Consumer group

5.42 Some firms expressed disagreement that the cost of borrowing should be expressed for as long as a year, given that overdrafts are not intended for long-term use.

5.43 Consumer groups and debt advisors, while agreeing that an overdraft should only be used for short term borrowing, believed that including the cost of borrowing over a year, would

be a useful method of helping consumers to understand the likely impact on their household overheads if overdraft use became protracted.

- 5.44** There was some concern that the disclosure, when added to other requirements, eg for representative APR display, could lead to information overload for consumers.

Our response

Our consumer research has shown that consumers want to see the cost of using an overdraft in pounds and pence.

We have worked with UK Finance on an industry agreement to deliver this. It will be implemented at the same time as our other pricing remedies. Firms will use a simple table to show the cost of borrowing a standard amount across different periods of time, which will include 7 days and 30 days. We will work with UK Finance on the best way to present this information.

6 Refused payment fees

Background

- 6.1** In CP18/42 we set out our proposed guidance to clarify which costs providers can consider to ensure that their refused payment fees (RPFs) reasonably correspond to actual cost in line with the Payment Services Regulations (PSRs).
- 6.2** We said that we found clear links between consumers incurring fees for unarranged overdrafts and refused payments. While we do not expect our pricing interventions to significantly reduce access to unarranged overdrafts for consumers, a move in the market away from offering unarranged overdrafts could result in more declined transactions. (Chapter 2 provides further details of our analysis of this potential consequence.) We reiterated that we would be concerned if providers look to do more than recover legitimate costs when using RPFs.
- 6.3** Our proposed guidance said that if a PSP undertakes a cost allocation exercise across multiple product lines, the PSP should be satisfied that the resulting refused payment fee reasonably corresponds to the actual cost of refusing payments in each product line. Our draft guidance sought to clarify which costs can reasonably be attributed to refusing payments. This included cost items such as:
- incremental payment system cost incurred in the process of refusing a payment
 - providing alerts and notifications: including text messages, emails and letters in respect of a refused payment
 - customer service contact initiated by the customer over the phone, through digital channels and in branches because of a refused payment
 - the cost of handling a complaint arising out of a refused payment
 - certain infrastructure costs, as long as these can be reasonably allocated to the activity of refusing payments according to an appropriate accounting methodology
- 6.4** The draft guidance also clarified that we would expect firms to exclude the costs associated with the general operation of the business from the cost calculation. This would include items such as:
- costs of refusing payments that fall outside the scope of the PSRs
 - fraud detection and prevention
 - collection, recoveries and impairments
 - costs of complying with regulation (other than regulation in relation to refused payments)
 - bank statements
 - Financial Services Compensation Scheme levies
 - Financial Ombudsman Service general levy
 - marketing
 - general operational and staff expenditure, including costs of branches or cash machines

Summary of feedback received

6.5 In CP18/42 we asked:

Q10: *Do you agree with our proposals for guidance for recovering costs via refused payment fees? If you disagree, please set out which costs should be excluded and why, and which costs should be included and why.*

6.6 Consumer groups strongly supported our proposals, highlighting the need for greater clarity and expressing concern about possible waterbed effects. We also received feedback that suggested we should consider banning RPFs if these do not reflect actual costs. It was also suggested that firms should be required to alert the customer that a payment would not be paid and help them take remedial action. We also received feedback that we should examine the consumer detriment from repeat refused payment fees, particularly to vulnerable consumers.

6.7 We had mixed feedback from firms, with some expressing agreement with our guidance and some firms also proposing further cost items to be included. We also had feedback that we should be less prescriptive with cost details, that the proposed guidance is more restrictive than required by the PSRs and that it does not reflect the true end cost of providing the service to customers.

6.8 One firm suggested that firms should be allowed to include a margin in their RPFs. This firm also argued that providers should also be allowed to include a share of their wider investment and infrastructure development costs as part of the cost apportionment and include the cost associated with refusing payments not covered by the PSRs (such as cheques). Further, the firm argued that many of the costs involve cannot be specifically allocated, pointing to the need for an element of cost apportionment to help develop an appropriate cost base for refused payments.

6.9 One firm suggested that alignment of arranged and unarranged overdraft charges might lead to more refused payments, which could hit the most vulnerable. Another firm was concerned about, but did not further specify potential unintended consequences for vulnerable consumers through raising other charges (a waterbed effect). It was also suggested that these fees act as a prompt for consumers causing them to engage more with their current account, and if these fees were to fall this could cease to be the case.

Our response

The PSRs make clear that providers may agree with customers that they are entitled to charge RPFs, where the refusal is reasonably justified, but these should 'reasonably correspond to the payment service provider's actual costs' (Payment Services Regulation 2017, regulation 66(1)(c)).

We note that some firms do not charge RPFs. Where firms do charge RPFs, providers should set RPFs that reasonably correspond to the provider's actual costs. This means they should not derive a profit from their RPFs.

Our guidance is intended to capture all payment service providers that fall within the scope of the PSRs and so is not intended to be specific to banks or building societies that may charge such fees as part of their current account offerings.

In the light of the feedback received, we consider that our draft guidance will achieve its aim of describing the principles that govern which categories of costs are legitimate and are appropriate to recover through RPFs. The guidance does not provide an exhaustive list of specific costs, and we do not consider that it is necessary to add or remove certain cost categories from the guidance, nor to change the level of detail that we provide in the guidance.

We will monitor developments in firms' charges for RPFs once the guidance comes into force, and would be concerned if providers look to do more than recover the legitimate cost of refusing a payment.

Firms should note while our pricing remedies apply only to PCAs, the guidance referred to in this chapter, like the PSRs themselves, apply to all payment service providers subject to the provisions in the PSRs, and will therefore also apply to accounts held by micro-enterprises. This was factored into our CBA for CP18/42.

7 Repeat use

7.1 In this chapter, we respond to the feedback received on our proposals to reduce the harm arising from repeat use of overdrafts. Our proposals have been well received and we have made the proposed rules, with some additions made to guidance.

Background

7.2 In CP18/42 we proposed requiring firms to

- **Develop a strategy to reduce repeat use harm.** We have defined 'repeat use' in the rules as 'a pattern of overdraft use where the frequency and depth of use may result in high cumulative charges that are harmful to the customer or indicate that the customer is experiencing or at risk of financial difficulties'.
- **Incorporate, within their strategy:**
 - **policies, procedures and systems to monitor** customers' overdraft use, **identify repeat users**, and **sub-divide** the latter into 2 categories:
 - a. those for whom there are signs of actual or potential financial difficulties
 - b. all other repeat users
 - **Indicators** of actual or potential financial difficulties, relevant for customers in category (a) above (and we have given examples of such indicators in the guidance to the rules)
 - **Interventions** for the firm to undertake, dependent on whether a customer is in category (a) or (b)
 - If the customer is in category (a) (financial difficulties), the firm must seek dialogue with the customer, and present options for reducing use (the guidance to the rules gives examples of options), explaining that if the issue continues, suspension or removal of the overdraft may occur (unless that would worsen the customer's financial position)
 - If the customer is in category (b), the firm must communicate with the customer, highlighting the customer's pattern of use and indicating that this may be resulting in high avoidable costs; the firm must continue to monitor the customer, and if the pattern of use continues, the firm must send a similar communication after a reasonable period, and then at least annually
- **Provide us with their strategy** when the rules start to apply, and after any substantial changes
- **Implement their strategy** from when the rules start to apply, and then **monitor the effectiveness of their strategy**, and update or adjust it as appropriate
- **Report** to the FCA on the outcome of their monitoring after 6 and 12 months – including details of any change to the total number of repeat users, the total size of their overdraft balances and any other relevant background information

Feedback received

7.3 In the consultation, we asked:

Q11: *Do you agree with our final proposals for addressing the harm from repeat use of overdrafts?*

7.4 There were 21 responses to this question, comprising responses from 8 firms, 12 consumer bodies and debt advice bodies and 1 firm trade body.

7.5 Almost all firms supported our proposals for addressing harm from repeat use of overdrafts, recognising our remedy as being a sensible and proportionate starting point for addressing this harm. Only 1 firm respondent did not agree that repeat overdraft usage required to be addressed as a harm.

7.6 The difficulties of defining repeat use and identifying consumers who are in financial difficulty were noted by a number of firms and consumer groups, with respondents then highlighting that firms could approach this remedy in markedly different ways.

7.7 One firm suggested that the repeat use remedy should not be implemented until 2020, to give other remedies time to bed in. Other respondents expressed concern about the feasibility of approaching all overdraft repeat use consumers within a short timescale. They noted the increased workloads this would create for firms' own staff and for debt advisory services.

7.8 A number of specific clarifications of the draft rules and guidance in CONC 5D were sought by firms. These were about:

- the potential intervention of reduction or cancellation of the overdraft facility
- definitions of 'reasonable timescales'
- offering forbearance as an intervention to support consumers in financial difficulty
- the application of our remedies to customers who are being supported by debt advice bodies

7.9 Consumer groups and debt advice bodies all supported our view of the harm caused by repeat use of overdrafts. They supported our proposals to require firms to have strategies to identify, engage with and support consumers who are suffering financial harm from the repeat use of overdrafts. Some did not think our proposals went far enough. Other respondents felt that the FCA should define a minimum set of triggers that all firms should employ, ie recurrent instances of overdraft use over a fixed period, or periods of cumulative use, such as 90 days in any 180 day period.

7.10 Debt advice bodies in particular felt that repeat use of an overdraft facility over only a relatively few months could indicate that a consumer was suffering financial harm and as such urged for action to be taken by firms well before the 12 month stage:

'This is important: it makes a big difference to people in difficulty when firms reach out at an early stage to offer them a safe way out of difficulty'.

– Consumer group

7.11 There were requests for the FCA to set out a clear framework of support and forbearance for consumers. In particular that formal requirements be set out for actions such as:

- Forbearance - there were requests for the FCA to set out a clear framework of support and general offering of forbearance to consumers.
- Freezing charges and interest in particular - a number of groups highlighted the significant negative impact to consumers when firms continue to apply charges and interest to consumers with financial difficulties. There was a call for clearer requirements to aid consumers by freezing interest and charges.
- When an overdraft was no longer the most appropriate, or cost effective, product for a customer, 1 consumer group suggested that there should be a requirement for firms to bring more suitable options to the customer's attention.

- 7.12** There was support for firms to use forbearance measures to help consumers, and to restructure overdraft debt to affordable term loans when needed.
- 7.13** There was concern that without some commonality of triggers, and agreement on frameworks for supporting consumers, there could be a wide divergence in the way similar consumers were treated by different firms, and insufficient focus on early intervention. A debt advice body suggested that it would be helpful if each firm published a statement explaining their repeat use policy.
- 7.14** Consumer groups and debt advisors also expressed particular concern that this remedy may lead to firms seeking to remove overdraft facilities from consumers who are repeat users of their facilities, potentially leading to worse financial problems. There was a concern that firms would look to penalise consumers.
- 7.15** It was highlighted that repeat use is not just a driver of harm, it may also be a consequence of harm. Consumers who are under financial pressure in other aspects of their life, ie housing costs, loss of income, high overall debt levels, find themselves with little option other than to repeatedly use an overdraft facility. Consumer groups raising this point asked that firms should try to intervene and help consumers as soon as any repeat use is identified. Their view was that if firms wait for 12 months of repeat use to be evidenced, it might be very difficult by then to help the consumer back to a good financial position.
- 7.16** The majority of consumer groups highlighted the importance of appropriate communication with consumers who are suffering financial harm. They stressed the importance of the form and tone of communication. Communications should be supportive and non-threatening.
- 7.17** There was also a call from some consumer groups for more consistent guidance on how firms should support vulnerable consumers, particularly those with mental health problems and the disabled.
- 7.18** There was also a request from a consumer group for more effective and more regular assessment of the affordability of overdrafts.
- 7.19** Consumer groups and debt advisory bodies also called for close monitoring of the outcomes of the remedy by the FCA, with ongoing monitoring being extended beyond that proposed in CP18/42. There were requests that the FCA publish the statistics due to be provided by firms 6 months and 12 months after implementation of this remedy. There was also a request for the FCA to measure the overall success of this remedy.

Our response

We welcome the feedback on our proposals particularly around how firms should approach building their strategies for tackling the harm arising from repeat use. We have made the rules as set out in the CP. In the light of feedback received some changes have been made to the guidance.

We do not propose to define 'repeat use' further than we have done in CONC 5D.

It is important to be clear that firms can develop their own strategies for reducing repeat harm use and firms themselves are best placed to understand their own overdraft lending book. Firms are encouraged to use a range of indicators to help them determine which customers might be facing financial difficulties. CONC 5D.2.3 G(3) gives guidance that firms have discretion to tailor the policies, procedures and systems to their specific business circumstances.

Repeat use may harm consumers after only a few months, if other factors are at play, such as loss of income and/or build-up of debt levels. We remind firms of the findings on Repeat Use in [Technical Annex Chapter 4](#) of CP18/42, and firms are encouraged to have policies, procedures and systems that are effective in promptly identifying repeat users. We have amended our guidance to reflect this.

There are very different approaches to actions taken by firms when repeat use is identified. The customer's response to the firm's initial contact will be important in determining the firm's next steps. We encourage firms to engage fully with customers and consider a wide range of ways to support consumers who are experiencing financial harm from repeat overdraft usage. Some firms are already taking proactive steps to identify and support this group of customers, for others new identification and support strategies will need to be developed.

We remind firms that responses should be appropriate and proportionate. They should be the right response for the individual consumer.

Firms should consider other ongoing work to help consumers with problem debt, such as the proposed '[Breathing space scheme](#)' when developing their Repeat Use strategies. HM Treasury has consulted on this scheme, which would give someone in problem debt the right to legal protections from creditor action while they receive debt advice and enter an appropriate debt solution.

Firms are required to develop their own strategies for addressing this harm, with the strategy document being submitted to the FCA. Industry wide initiatives are welcome and encouraged particularly around the sharing of best practice. However, we equally understand that strategies developed may differ significantly from firm to firm.

We will monitor closely the strategies submitted by firms. They will be reviewed for each firm's own book of customers, and each firm's existing approach, if any, for addressing repeat use.

We will undertake a post implementation review of the package of overdraft remedies.

Removal of overdrafts

A significant number of consumer groups voiced concerns that the repeat use remedy could lead to firms removing, or reducing, overdraft facilities, potentially causing consumers financial hardship.

We are not mandating any reduction or removal of overdraft facilities.

Firms should consider how the removal of an overdraft could cause financial hardship to their customers, and of the risk (that is likely to be high in many cases) that the consumer could be unable to make essential payments through their PCA. CONC 5D.3.2 R(7) states that a firm is not required to consider the suspension or removal of the overdraft facility or a reduction in the credit limit if it would cause financial hardship to the customer.

We have added additional guidance to explain that firms should carefully consider the potential effect on a customer before considering the removal of an overdraft facility since, in many cases, this is likely to cause financial hardship.

Communication with consumers

The concerns of consumer groups are very clear and we remind firms that communications with their customers must be in an appropriate medium. CONC 5D3.3G (2) gives guidance to firms to 'tailor the language and tone of communications to the circumstances of the individual customer'.

Firms are also reminded of the need to communicate in an appropriate medium (CONC 5D.3.1R (2)). Firms may need to change the medium of communication when trying to engage customers who have failed to engage following initial communications.

Consumers who are suffering from financial harm through repeat use may be vulnerable consumers and should be treated appropriately.

Implementation timelines

Firms and consumer groups overwhelmingly agreed with our assessment of harm caused by the repeat use of overdrafts. In CP18/42, we reported that 14% of consumers used their overdraft every month in 2016 and 69% of all arranged, unarranged and refused payment fees.

Other remedies, such as text message or push-notification alerts are helping consumers to engage more with their overdraft debt and are leading to changes in behaviour for a number of consumers. For those suffering the most harm from repeat overdraft use, alerts and similar remedies will not be sufficient to help them. Intervention by firms is required, rather than simply relying on behavioural changes.

In view of the level of harm it is important that repeat use policies and procedures are implemented as quickly as possible once the new rules

are in force. We have added guidance making clear that firms should prioritise those customers who are more vulnerable.

Appropriate phasing of implementation, and approaches designed to help and support consumers, will ensure that undue pressure on debt advisory services is avoided.

We require firms to submit their repeat use strategies to us by **18 December 2019**.

'Reasonable' timescales

A trade body asked for clarification around the definition of reasonable timescale within CONC 5D.3.2.

For the purposes of COBC 5D.3.2R(3), 'reasonable period' is stated as being unlikely to be longer than 1 month. In all other instances, what is considered to be reasonable will be dependent on the particular circumstances.

Forbearance

One firm suggested that clarification is required for CONC 5D.3.2. This requires firms to identify and set out suitable options designed to help the customer, in a way that does not adversely affect the customer's financial situation. We were asked in particular whether granting forbearance might be considered to adversely affect the customer's financial situation.

What are suitable options to help a customer address their actual or potential financial difficulties will depend on the customer's individual circumstances. 5D.3.3G(4) provides a non-exhaustive list of options that firms might use. The options described are not mutually exclusive but rather may complement one another as part of an appropriate response (for example, it may be appropriate to grant forbearance, such as reducing or waiving interest, and also refer a customer to a debt advice body to help ensure the customer receives timely advice and assistance.)

Customers already receiving debt advice

We have been asked to confirm the appropriate actions to be taken by a firm when repeat use is indicated, but the customer is already obtaining debt advice from a regulated debt advisor. In this case the customer would still be protected by our new rules. The firm should still take steps to understand the overall circumstances of the customers and what support may be required, notwithstanding the involvement of a debt advisor.

Assessment of overdraft affordability

Questions around the initial and ongoing assessment of overdraft affordability fall outside the scope of this policy.

Monitoring the effectiveness of the remedy

We will engage with firms in the period after publication of these rules to discuss their strategies for addressing repeat use.

8 Application of our proposals and implementation

8.1 In this chapter we summarise and respond to feedback received to the proposed application of our rules and to the proposed timeline for implementation of our remedies.

Application of our proposal

8.2 We proposed that the rules described in Chapters 4 and 5 of CP18/42 would apply to banks and building societies offering personal current accounts, with the following exceptions:

- private banks and credit unions
- current account mortgages
- firms would not be required to comply with the rules for accounts where there are certain limitations on the ability of a customer to go overdrawn or incur overdraft-related charges

8.3 We asked

Q12: Do you agree with our proposed application of the rules?

Feedback received

8.4 Most responses to this question supported the proposed application of our proposals. Two firms and 2 trade bodies raised concerns about the definition of private banks, and 3 firms made requests for clarifications around accounts where there are limitations on the ability of a customer to go overdrawn. Confirmation was also sought from 1 firm as to the applicability of the rules to currency accounts, and from another firm in relation to brands closed to new business.

Private banks

8.5 Respondents noted that the definition of a private bank had been derived from the definition provided in Article 9 of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities ('ring fencing rules')). This is the definition that we have drawn on in existing rules on current account services information and competition remedies, where we require more than 50% of a bank's customers to meet the wealth requirements to be eligible customers under the ring fencing rules, if the bank is to be considered to be a private bank.

8.6 Some respondents were concerned that this definition gives certain challenges for existing private bank providers. The test under the ring fencing rules disregards wealth held under Undertakings for Collective Investments in Transferable Securities

(UCITS) and other collective investment schemes. This means that many private bank customers with considerable wealth are not counted toward the threshold and genuine private banks may be unintentionally excluded from using our private bank exemptions.

- 8.7 Other respondents raised issues of consistency with definitions of private bank used in other FCA rules, particularly the Banking: Conduct of Business sourcebook (BCOBS) 7.

Personal currency accounts

- 8.8 Clarification was sought as to whether our rules extended to foreign currency (non-sterling) accounts.

Excluded accounts/accounts where there are limitations on the ability of a customer to go overdrawn

- 8.9 These are accounts offered without an arranged overdraft, where there is no refused payment fee and the account either cannot go into unarranged overdraft, or, if it can, no charge is made for entering unarranged overdraft. Most, but not all, accounts described as a 'basic bank account' will meet this definition. Basic bank accounts are offered by a number of providers and further details of the accounts can be found on the Money and Pensions Service website.

CONC High Net worth exception

- 8.10 Clarification was sought on the application of the rules to overdrafts provided to exempt accounts (agreements).

Our response

Private banks

We are acting on feedback that the definition used in BCOBS 8 is deficient and does not achieve the outcome we are seeking, ie the exclusion of private banks from our overdraft pricing remedies.

In light of this feedback we have amended the definition of private bank which will apply to CONC 5C and 5D.

The revised definition does not include the restrictions on defining net worth that our originally proposed definition included. We believe that the revised definition will correctly exempt Private Banking entities and brands from complying with our new rules.

The new definition describes a private bank as 'a bank or building society or an operationally distinct brand of such a firm over half of whose personal current account customers each had throughout the previous financial year net assets with a total value of not less than £250,000'. (CONC 5C.5.1(5) details.)

In [CP19/18](#) we consult on proposals to amend the definition of private bank used in BCOBS 7 and 8 to align with the definition in CONC 5C and 5D.

Brands closed to new business

As the harms identified in our work apply to all overdraft users, the new rules and guidance are applicable to brands that provide overdrafts, including those brands that are closed to new business.

Excluded accounts

These are accounts offered without an arranged overdraft, where there is no refused payment fee and the account either cannot go into unarranged overdraft, or, if it can, no charge is made for entering unarranged overdraft.

As our rules on pricing are focused on charges for overdraft borrowing, they will not apply to such accounts. Firms that offer only excluded accounts are explicitly excluded from the scope of the new rules on pricing and repeat overdraft in CONC 5C (CONC 5C.1.2R(2)(a)) and CONC 5D (CONC 5D.1.3R(2)(a)).

Personal currency accounts (non-sterling)

We have no evidence of harm to consumers from overdrafts on currency accounts. Currency accounts are likely to be secondary accounts for personal consumers. So we have excluded personal currency accounts from the scope of our rules. Our rule has been amended accordingly.

CONC High Net Worth

CONC 1.4 contains rules which permit an agreement to be excluded from being a regulated credit agreement if the agreement contains a declaration of high net worth by the borrower, supported by a statement of high net worth. As exempt agreements are not regulated agreements they will not be subject to the rules detailed in this policy statement.

Timelines for implementation

- 8.11** We see significant harm in the overdraft market which needs to be addressed urgently.
- 8.12** We proposed allowing firms 6 months to comply with the draft rules and guidance proposed in CP18/42. It was also proposed that the implementation date for our competition rules be aligned with that for the overdraft pricing rules. (Chapter 9 refers.)
- 8.13** We asked

Q13: *Do you agree that firms should be given 6 months to comply with the proposed rules?*

Feedback received

- 8.14** Firms generally felt that the proposed timescale was too short, with only 1 firm suggesting that 6 months should be the maximum time permitted. Five firms stated that the timescales was unachievable.

- 8.15** Firms gave detailed explanations of the complexity of the project to change pricing structures and provided timelines they felt were achievable for a project of this nature. Firms provided timelines showing time needed for analysis and design, IT build and testing of changes. Communication with customers was also flagged as a restricting factor; firms need to design and issue customer communications and provide customers with notice of pricing changes required by contractual and regulatory provision. The estimates provided by firms for the project length were between 6 and 14 months, with the average being just under 12 months. Firms that had made changes to pricing structures in the last few years were able to give details of how long similar projects had taken in the past.
- 8.16** It was highlighted by several firms that fundamental pricing changes need to be rolled out to all current accounts customers simultaneously.
- 8.17** Firms had concerns about the challenge of dealing with a number of regulatory-driven change programmes at the same time. As well as pressure on IT teams, firms were concerned about multiple communications being sent to customers in a short period of time, potentially leading to customer confusion.
- 8.18** It was also noted that early December, the proposed implementation date, coincides with very high volumes of payments. This would normally be a period that firms would avoid when implementing large scale IT changes, to mitigate the risk of any adverse impact on customers.
- 8.19** For the repeat use remedies, there was a request from several firms for implementation to be delayed until the pricing remedies had time to take effect. No firms suggested that implementation of this remedy within 6 months was unachievable.
- 8.20** The harm resulting from high overdraft prices and repeat use of overdrafts was clearly described by consumer groups and debt advisors. 2 consumer groups sought changes more quickly than the proposed 6 months. The majority asked for changes to take place as soon as possible, with a number commenting that 6 months seemed reasonable.

Our response:

Having considered the views of firms, as well as recognising the level of harm in the overdraft market, we are extending the implementation date for the overdraft pricing remedies until **6 April 2020**. In our judgement, and based on the plans we have reviewed, this will give firms adequate time to design, test and implement a revised pricing structure in line with the new rules.

We also recognise that some changes we are requiring are quite distinct from the pricing changes and can be delivered more quickly.

Repeat use remedies will be implemented from **18 December 2019**, allowing a significant number of consumers to benefit from these remedies from that point. We observed in CP18/42 that 14% of consumers used their overdraft every month in 2016 and paid 69% of all arranged, unarranged and refused payment fees.

The competition remedies rules which we made in December 2018 (see [CP18/42 Chapter 7](#)) will also come into effect on **18 December 2019**.

Our revised guidance on Refused Payment Fees takes effect immediately.

Table 1: Implementation dates

Remedy	7 June 2019	18 Dec 2019	6 April 2020
Refused Payment Fee guidance	✓		
Repeat use		✓	
Competition remedies online eligibility tool; information on overdrafts at account opening; alerts; available funds		✓	
Alignment of arranged and unarranged prices			✓
Simplification of pricing single interest rate; no fixed fees			✓
Display of APR in financial promotions			✓

Transitional arrangements

- 8.21** In Chapter 2 of this policy statement we explained our view of the wider effects of our intervention in overdraft pricing. We have acknowledged that some consumers may face higher prices for arranged overdrafts.
- 8.22** The responses to CP18/42 clearly show that consumer groups and indeed some firms are concerned about the impact of our proposals on existing borrowers, particularly those with large arranged overdraft balances. In particular, there was a concern around some consumers, sometimes referred to as 'overdraft prisoners', who have high overdraft limits and balances, and may be unable to switch accounts after their bank has changed its overdraft charges.

Our response

Firms must take appropriate action to ensure that they consider the impact of pricing changes on all groups of their customers.

Firms are required under CONC 5C.4 to consider the impact of their pricing changes on existing customers, and where appropriate they should treat customers that will be adversely impacted with forbearance and due consideration.

Principle 6 is relevant. A firm must pay due regard to the interests of its customers and treat them fairly.

Examples provided by consumer groups and some firms that could be used to mitigate the impact of the proposals are below:

- Firms offering a structured, fair repayment programme to consumers, at a rate no higher than the old overdraft rate. This repayment programme might be implemented by way of an agreed repayment plan on the overdraft facility or by way of transfer of overdraft debt

(full or part) to a personal loan at a preferential rate of interest (noting the requirement to assessment affordability if a personal loan is provided). Both strategies would allow the customer to repay the debt over a fixed period.

- Continuation of overdraft borrowing at current rate of interest for existing customers.
- Forbearance, such as reducing or waiving interest for a period, as part of a strategy to help customers reduce overdraft debt.

Application of our proposals to overdrafts provided to micro-business customers or products marketed to consumers as having the same function as an overdraft

8.23 The rules proposed in CP18/42 are to protect personal consumers who hold current accounts.

8.24 In Chapter 4 of CP18/42, we said that our review focused on PCAs and that we did not propose to apply our new rules to Business Current Accounts (BCAs) or to products marketed to consumers as having the same function as an overdraft.

8.25 As part of our consultation we asked if respondents had any comments on possible harm caused by these products and whether our rules should be extended to cover the products.

8.26 We asked:

Q14: *Do you have comments, observations or evidence on whether overdrafts provided to micro-business customers or products marketed to consumers as having the same function as an overdraft should be subject to similar rules to those proposed in this CP?*

8.27 We received responses to Q14 from firms, consumer bodies and industry bodies. Most of the feedback received focused on the first part of Q14, namely on whether market participants believe overdrafts provided to micro-business customers should be subject to similar rules to those proposed in our CP.

8.28 A smaller number of respondents addressed the second part of Q14, where we asked them to comment on whether products marketed to consumers as having the same function as an overdraft should be subject to similar rules to those proposed in this CP.

Micro businesses (also known as micro enterprise customers)

Feedback received

8.29 Consumer organisations and debt charities expressed the view that the rules should apply equally to micro business customers.

- 8.30** Banks providing overdrafts to micro businesses disagreed. They cited key differences between personal and business customers and their overdraft usage. Overdrafts provided to business customers are often required to support working capital for the business and as such may well be used for much longer periods of time than personal overdrafts which are marketed as being for short term borrowing.
- 8.31** One bank highlighted that business customers typically requested larger facilities and used them more often than personal customers, and that the provision of business overdrafts often involved manual credit assessment. In addition, this bank noted that charging structures for business overdrafts often includes an arrangement fee, which is not normally the case for personal customers.
- 8.32** Another bank pointed out that there is a greater range of business overdraft products including balance offset products, foreign currency products, and potentially individually negotiated pricing.

Our response

We are not extending our overdraft pricing rules to micro businesses (micro enterprise customers) at this time. Our RPF guidance does however relate to a provision of the PSRs that extends to micro-enterprises, as well as consumers.

We will incorporate the feedback received in to the work we are taking forward on small and medium-sized enterprise (SME) banking following our Strategic Review of Retail Banking Business Models. This review highlighted the value that banks derive from BCAs which pay very little interest and have comparatively high transaction charges.

As a result, our work will consider whether SMEs are well served by retail banking offerings and how the market may change in the future.

We will publish more details about the scope of our follow up work on SME banking later this year.

Products marketed as having the same function as an overdraft

- 8.33** In this section, we talk about products which are marketed as having the same function as an overdraft but are not provided by banks and building societies as part of a current account package. Examples would be 'income smoothing' products and unbundled products.
- 8.34** Income smoothing products are usually provided via online and mobile applications and help consumers smooth out the higher and lower points in their income and offer an alternative to forms of credit like overdrafts. These products analyse the customer's bank account and related transactions to work out their average monthly income. The application then takes money away when customers have higher than average income and use that surplus either to cover low-income months or repay any loans, essentially turning irregular income into something like a regular salary.

- 8.35** Unbundled products, on the other hand, are products that monitor a customer's account and deposit money if the account balance approaches zero. As soon as new funds are available in the account, money is automatically transferred back from the PCA to the unbundled product to repay outstanding borrowing. These products may be linked to either a traditional PCA or an e-money account.

Feedback received

- 8.36** Most respondents argued that we should extend our rules to products marketed as similar to overdrafts but none of them provided evidence as to why we should do that. A consumer body, however, suggested that we should consider how Open Banking services may create additional detriment for overdraft consumers with regard to creditworthiness assessments. This respondent pointed out that as a result of credit being offered under running-account credit agreements, these products require creditworthiness assessments only at the outset and upon any significant increase in credit limit, reducing the effectiveness of affordability checks.
- 8.37** One respondent argued that we should continue to view overdrafts as entirely separate from other classes of consumer credit lending. They pointed out that it would be very difficult for the FCA to extend our rules to 'overdraft like' products without also potentially affecting other forms of consumer credit lending.

Our response:

We note that several respondents would like products marketed to consumers as having the same function as an overdraft to be subject to similar rules to those proposed in CP18/42. None of them, however, provided us with evidence of harm caused by these products. Furthermore, companies providing 'overdraft like' products operate with a range of different business models and we have not seen significant evidence of harm at this stage.

At the same time, we appreciate the concerns expressed by these respondents and for this reason we will continue to look at these products and companies as they develop.

We also recognise that 1 consumer body expressed concerns about the way firms carry out creditworthiness assessments. The nature of running account credit means that credit can be drawn down without having to enter into a new agreement and go through a further creditworthiness assessment. However, an assessment must be carried out on any significant increase in credit limit and we recently clarified that this includes the cumulative effect of multiple small increases. In addition, Open Banking service providers may access data on customers' current account transactions. They will also be able to identify risks of financial difficulties before they crystallise.

For these reasons, we will evaluate the impact of these firms' products and practices over the market and we will be ready to review our position, should any evidence of harm arise.

9 Implementation of our competition remedy rules

- 9.1** In CP18/42 we proposed to align the implementation date of our competition remedy rules (discussed in [Chapter 7](#) of that paper) with any rules we made to simplify overdraft pricing. We also considered whether any changes to the rules would be required because of the proposals in [Chapters 4 and 5](#) of CP18/42.
- 9.2** As CP18/42 proposed to simplify overdraft pricing and not permit tiered pricing structures, we noted that BCOBS 8.4.16R (which provides for alerts in circumstances where there are multiple arranged overdraft limits) and related rules at BCOBS 8.4.17R(6) and (7) which specifically relate to tiered overdraft pricing would become redundant. We proposed removing these provisions, and amending other provisions that cross refer to them. As firms will be permitted to provide fee-free buffers or fee-free arranged overdraft amounts, we would keep guidance about the treatment of such amounts for alerts at BCOBS 8.4.19G(4).
- 9.3** We asked:

Q15: *Do you agree with the changes proposed in this chapter? (Chapter 8)*

Feedback received

Timing of implementation

- 9.4** Most firm respondents sought additional time for the implementation of the rules. They did however agree that it would be appropriate to align the implementation of both the competition remedy rules and the overdraft pricing rules.

Our response

The implementation date of the competition remedy rules will be 18 December 2019. This date aligns with the implementation of the first of our overdraft pricing remedies (repeat use) and is 12 months after the publication of our final rules on competition remedy.

Deletion of tiered pricing alerts rules

- 9.5** We received feedback from 1 firm that did not support removal of rules which require firms to send an alert when a customer moves tier as firms will be permitted to provide fee-free buffers or fee-free arranged overdraft amounts.

Our response

This was recognised in CP18/42, so we kept guidance at BCOBS 8.4.19G(4) for accounts where some overdraft borrowing might be free of charge.

We can also confirm that in terms of the sequence of change, the deletion provisions regarding tiered pricing alerts will not come into force until the pricing rules do.

Other feedback

- 9.6** A number of firms gave feedback on the content of the competition remedies, in addition to feedback on the implementation date. As the competition rules became made rules in December 2018, the additional feedback has not been considered as part of this consultation.

Minor amendments to competition remedy rules

- 9.7** Following feedback, we have made minor edits to the competition remedy rules to correct some cross references and remove all references to deleted rules.

10 Cost Benefit Analysis

10.1 In this chapter, we summarise the main responses we received to Q16 of CP18/42 and set out our response to the comments received. We also provide an update on the cost benefit analysis as we have updated some of our analysis on the distributional impact of our remedies. We also consider the impact of changing our implementation timescales on the cost benefit analysis.

10.2 We asked:

Q16: *Do you agree with our cost-benefit analysis?*

Feedback received

10.3 Some respondents from consumer bodies and firms agreed with the CBA.

10.4 One respondent, who agreed with the CBA, was concerned about the potential costs to consumers of the waterbed effect. They were particularly concerned about loss of access and the increased interest rates for some consumers. They did note that the scope of these costs may not become clear until the rules are put in place.

10.5 One respondent welcomed that the CBA considered the cost to consumers of the time spent engaging with firms. However, the respondent noted that the CBA did not consider or quantify the benefits to consumers of reduced stress from excessive arranged overdraft charges. Nor did the CBA consider the benefit to consumers of no longer having to complain about these charges.

10.6 One respondent suggested that the proposals will not deliver the benefits expected by the FCA. This is because competition interventions have not been effective in improving the functioning of retail financial markets. They suggested a price cap would be more effective.

10.7 One bank said that the costs of the competition remedies on 'available funds/ balance' were too low. They also did not see sufficient evidence to suggest that the use of available funds causes significant consumers harm. They therefore suggested that the remedy did not meet the proportionality test. Rather, they thought that it would lead to customer confusion.

10.8 Another bank said that the CBA should only be regarded as indicative. This is because of the limited time the FCA had to undertake the CBA. Further, the analysis would be limited by the lack of detail provided about specific changes of the remedies in the survey undertaken to inform the CBA.

10.9 One firm suggested that there have been material changes in the overdraft market over the last 18 months that was not taken into account in the consultation or the CBA. This is especially the case as the data used to inform the CP was from 2015-16.

- 10.10** One firm said that the CBA is largely based on the costs to firms and benefits to consumers, rather than analysing both sides from the same perspective. As a result, the CBA did not give any clear conclusion.
- 10.11** One firm suggested that their existing business model achieves the same outcomes as the FCA's proposal for a single interest rate. Consequently, there were not additional benefits to consumers from the pricing changes. The firm stated that they would incur costs broadly in line with those previously incurred when changing their pricing model.
- 10.12** In addition, one firm said that the timeline indicated for implementation ie 6 months from formalisation of rules, raises a high and real risk that firms would have had to build out solutions in advance of the final rules being available. This created a risk that late changes or indeed changes after implementation may be required, which would result in additional costs not identified within the CBA. This would be particularly the case where a further customer notification would be required.

Our response

None of the responses to the cost benefit analysis led us to think we need to change our analysis. The cost benefit analysis therefore remains unchanged apart from the updates we describe in the following section. We address here the comments described in paragraphs 10.2 to 10.12 above.

Potential costs of waterbed effect for consumers

In the CBA, we assumed that in the short term, firms will adjust their pricing structures to recover any loss of revenue. That is, there is a 100% waterbed effect. This approach was a conservative way of assessing the potential benefits of our changes. In practice, consumers of arranged overdrafts may substitute away from overdraft providers, or reduce consumption to avoid using their overdrafts, where there are significant increases in overdraft fees. In this situation, if the waterbed is not complete and firms lose some revenue, we would expect greater consumer benefits.

Furthermore, our package of remedies is designed to increase the level of competition in overdraft pricing. Such competition should lower prices for consumers and enable consumer switching to better value alternatives. This should prevent any adverse impacts on particular consumers, especially vulnerable ones.

We also considered the impact on consumers from loss of access to overdraft borrowing in Chapter 4 and 5 of the Consultation Paper and in Chapter 5 of the Technical Annex published alongside. We found that we do not expect our interventions to significantly reduce access to unarranged overdrafts for consumers. Given its profitability, there is limited incentive for firms to significantly reduce access, even if they reduce unarranged overdraft prices.

Other non-monetary benefits to consumers

Harm that arises from stress caused by excessive arranged overdraft charges was not a key harm being addressed by our pricing proposals.

While there is significant evidence on the link between debt and mental health, and some evidence that debt can cause mental health problems, we have not identified any specific evidence that the level of charges has a direct material impact on the mental health of consumers. We recognise that benefits of reduced stress may arise but we do not think it is sufficiently certain or reasonably practicable to estimate these effects.

We stated in the CBA that we expect that complaint volumes will fall as pricing becomes simpler and more proportionate. However, we found that it was not reasonably practicable to estimate the impact on the number of complaints and their impact on firms in the CBA. We would expect the costs to consumers of complaints will be much lower (the costs arise from the time dealing with complaints) than for firms but it is not reasonably practicable to estimate the benefits for consumers for the same reason we did not estimate the impact on firms.

Competition benefits

Estimating the impact of competition remedies where the benefits are dependent on the behavioural response of consumers is often difficult. Firms' response to changes in consumers' behaviour further complicate the estimation of benefits. Our pricing interventions seek to increase competition and make consumers more informed about their overdraft usage and possible alternatives. Our proposal for alignment seeks to use existing competitive pressure on arranged overdraft prices to cap unarranged prices at market rates. We also believe that alignment can deliver cheaper prices for consumers than a price cap for the reasons set out in the CP.

Costs of available funds remedy

Our analysis of the costs of implementing the remedy based on evidence provided by firms does not support the claim that we underestimated the cost in the CP. The benefits to consumers of the available funds remedy were not quantified (because it was not reasonably practicable to do so), but they point to potentially lower charges and greater consideration by consumers of whether to use their overdraft, in line with the general benefits of the other remedies.

Uncertainty in CBAs

We agree that there is always some inherent uncertainty in any CBA. This is in part due to the difficulty in predicting the future, both under the proposal and the baseline. We have, however, undertaken appropriate enquiries in order to produce reasonable estimates of costs and benefits, where it is reasonably practicable to do so.

Asymmetric assessment of costs and benefits

In our CBA, we considered all the costs and benefits that would arise from our proposals. While we were not able to estimate all the impacts we expect, we have considered these in our overall assessment. Benefits are inherently more difficult to estimate and we therefore were unable to estimate all the benefits (as it was not reasonably practicable to do so). We are particularly concerned about the disproportionate burden of high charges and the repeat use of overdrafts particularly to vulnerable consumers. We therefore think it is reasonable to 'weight' the impact

on these consumers more highly than that on consumers on higher incomes in our consideration of proportionality. We also consider that the improvements in competition arising from our proposals will deliver net benefits overall.

Recent market changes

We did not explicitly state how recent changes in firms' overdraft propositions were taken into account in our baseline. However, we did consider how costs and benefits would be affected by significant changes in overdraft propositions by specific firms. We acknowledge that the consumer-level data used to inform our policy is from 2015-16. Analysis of such data takes time and therefore it is unavoidable that there is a lag between data collection and consultation in such cases. However, this data is not the only data we used to inform our policy. We consider that if we had analysed more recent consumer-level data where we could observe the effect of changes in product offering, that our findings would not be materially different.

Lack of additional benefits from proposals

We do not agree that there are no additional benefits arising from our pricing changes. While removing unarranged fees and proportional charging is welcomed, a key element of our proposals is to directly address the complex range of pricing structures for overdrafts across different firms, which hinders competition. Competition can only work in the interests of consumers where consumers are able to easily compare different overdraft providers and other forms of credit, particularly 'revolving' credit such as credit cards. Our proposals enable greater competition and the significant benefits that would arise from such competition. While we were unable to estimate these benefits, they are a key consideration in our assessment of the overall proportionality of the proposals.

Impact of implementation timescales on costs

We have considered the potential for increased costs from the timelines we consulted upon for simplification and alignment of prices. We believe our changes to the timelines as set out in Chapter 8 reduces the risk of such costs being incurred and mean that the costs we estimated in our CBA remain unchanged (we consider how implementation timescales will affect the CBA at paragraph 10.27).

Update on the CBA

- 10.13** In the CBA, the benefits of pricing elements of the proposals were set out in two parts:
- a.** a qualitative assessment of the direct and indirect benefits to consumers
 - b.** an estimate of the distributional impacts or direct benefits to consumers
- 10.14** A key impact of our proposals is to help vulnerable consumers, especially those on low incomes. To aid our consideration of the overall proportionality of the proposals, we estimated how much we would need to weight benefits for low income groups (and

costs for higher income consumers) for the benefits to outweigh the compliance costs (see paragraphs 219 – 225 of the CP CBA).

- 10.15** For this estimation of the distributional elements of the policy, it was assumed that firms do not lose any revenue from the changes. Rather, the effect of the policy was to redistribute overdraft charges amongst consumers. The lowest 3 deciles of consumers by income on average gained from the redistribution while the highest 7 deciles of consumers by incomes lost on average.
- 10.16** This break-even analysis was undertaken to determine the elasticity of the marginal utility of income (the 'elasticity') required for the benefits from this redistribution to outweigh the costs. This was done by setting the elasticity required for one year of the weighted benefits to be equal to the costs.
- 10.17** We did this comparing one year of benefits with the one-off costs. We also did it comparing one year of benefits with one year of ongoing costs. We said that the actual breakeven value would be somewhere between the one-off and ongoing breakeven elasticities. Both calculated elasticities were much lower than the suggested elasticity of 1.3 proposed in HM Treasury's Green Book.
- 10.18** In our CBA, we reported incorrect weighting and breakeven elasticities. We have therefore restated the figures below for completeness. This restatement does not affect the costs or the monetary impacts on consumers in the CBA, nor the overall proportionality of our proposals – our assessment remains the same. Rather, it effects our analysis of the distributional effects. Our overall conclusion from our analysis of the distributional affects also remains the same. The benefits to low income and potentially vulnerable consumers outweigh the costs incurred by firms and other consumers.
- 10.19** This distributional assessment is also undertaken without considering the competition benefits of our proposals. We expect our proposals to have competition benefits that go far beyond what has been estimated in the CBA. If we were able to estimate the benefits arising from more effective competition, the break-even elasticities would be lower than those calculated in the CBA. Indeed, we expect that competition will drive benefits that will outweigh the costs.
- 10.20** The following paragraphs set out the changes to the CBA from correcting the calculation.
- 10.21** The break even elasticity when comparing one-off costs with one year of redistribution of fees amongst consumers is 1.68, rather than 0.19. The ongoing comparison is 0.12 rather than 0.01. Consequently, when comparing one-off costs with one year of redistribution of fees amongst consumers, the breakeven elasticity is slightly above the 1.3 suggested by the HM Treasury's 'The Green Book: appraisal and evaluation in central government'. Comparing ongoing costs and redistribution of fees the breakeven elasticity is below 1.3. We also noted in the CBA that the actual breakeven value was between the one-off and ongoing breakeven elasticities.
- 10.22** The break even elasticities enable us to calculate the welfare weights for each decile of consumers by income.
- 10.23** Below we show Table 22 of the CBA published in the CP with the original weighting and updated weighting. The numbers in brackets are the previously published numbers.

Table 2: Average income levels and implied welfare weights (original figures in brackets)

Decile of deprivation (1 least deprived and 10 most deprived)	Net annual household income after housing costs equivalised for decile of deprivation (£)	Implied welfare weight for breakeven with one-off compliance costs	Implied welfare weight for breakeven with ongoing compliance costs
1	£35,682	0.697 (0.959)	0.975 (0.998)
2	£33,042	0.793 (0.974)	0.984 (0.999)
3	£31,453	0.861 (0.983)	0.99 (0.999)
4	£30,450	0.91 (0.989)	0.993 (0.999)
5	£29,506	0.959 (0.995)	0.997 (1.0)
6	£28,057	1.044 (1.005)	1.003 (1.0)
7	£26,585	1.143 (1.016)	1.009 (1.001)
8	£25,094	1.259 (1.027)	1.016 (1.001)
9	£23,142	1.442 (1.043)	1.026 (1.002)
10	£20,169	1.817 (1.071)	1.043 (1.004)

Source: Firm cost survey responses, PCA numbers from firm data requests for CP18/13 and Strategic Review/HCCR, PCA data, MHCLG data on IMD, ONS data, FCA analysis

- 10.24** Given we are imposing one-off costs, and some relatively smaller ongoing costs, for recurring yearly benefits, we consider costs and benefits over a longer timeframe. This was not set out in the original CBA as comparison of one-off costs with one year of benefits arising from redistribution to lower income consumers implied the CBA broke even.
- 10.25** If we look at 10 years of costs and benefits (in line with Enterprise Act Impact Assessments and discount costs at 3.5% pa), the overall proposals break even with an elasticity of 0.34. Even looking at a 5-year period, with a breakeven elasticity of 0.50, they are net beneficial. Both of these are significantly below the Green Book elasticity of 1.3.
- 10.26** This means that, when we update the calculation so that it looks forward over a five or ten-year period rather than a one-year period, it continues to identify a clear benefit to consumers arising out of the redistribution of charges. These figures also remain calculated before considering the competition effects, which would increase the overall benefits further.

Impact of Implementation changes on CBA

- 10.27** As we set out in Chapter 8, we have extended the time firms have to implement alignment of arranged and unarranged prices, simplification of pricing and display of APR by four months. This delay in implementation will give firms more time to implement these elements. We would expect that longer implementation periods lower the costs of implementation.
- 10.28** Equally, the decision to not align the competition remedies with the pricing remedies may potentially increase the cost to firms if there were shared costs of implementation. This effect would likely be offset by the longer implementation timings for our pricing remedies. Although firms have previously noted the interaction

of competition and pricing remedies, there should also be no significant additional ongoing costs as a result of the split in remedies because we asked firms to consider the costs of the remedies in isolation. In any event, ongoing costs should already incorporate future changes in pricing which firms will put in place as they respond to competitive pressures in the future.

10.29 We therefore believe that the costs in the CBA are reflective of split implementation.

10.30 In summary, we do not think the change in timescales materially affect the overall costs of implementation and that there will be no increase in costs as a result, or, if there is one, it will be of minimal significance. The CBA is therefore unchanged.

Annex 1

List of non-confidential respondents

Carnegie UK Trust

Christians Against Poverty

Citizens Advice

Citizens Advice Scotland

Citizens Advice & Rights Fife

City of London Law Society Regulatory Committee

Fair by Design

Financial Inclusion Centre

Financial Services Consumer Panel

Leeds City Council

Money Advice Trust

Money Advice Scotland

Money Saving Expert

Scope

Single Financial Guidance Body

Smith & Williamson Investment Services

StepChange

Support in Mind Scotland

The Law Society of Scotland

The Money Charity

West Dunbarton Council (Working 4U)

Which?

We have also received responses from 11 firms and industry organisations, which have asked for their responses to be treated as confidential. We have also received responses from 12 individuals, which we will treat as confidential.

Annex 2

Finalised Guidance: Payment Services and Electronic Money – Our Approach

[The following guidance has been added to the Finalised Guidance: Payment Services and Electronic Money – Our Approach after paragraphs 8.250 onwards, along with consequential changes to the guidance document.]

- 8.250A Recital 77 of the Payment Services Directive states that, where a framework contract provides that the PSP may charge a fee for refusal, such a fee should be objectively justified and should be kept as low as possible. When setting the level of the fee the PSP should take an evidence based approach and:
- identify those actual costs that are reasonably referable to the refusal of payments,
 - set its charge or charges in a manner calculated to reasonably correspond to those costs over an appropriate time period having regard to the number and type of charges it expects to levy, and
 - not set their refused payment fees so as to derive a profit
- 8.250B The costs reasonably referable to the refusal of payments will include:
- costs that are directly attributable to the refusal of a particular payment and would be avoided if the payment was not refused
 - costs that arise from the refusal of payments in general, including costs that would be wholly avoided if the PSP refused no payments
- 8.250C Costs that are directly attributable to the refusal of a particular payment may include items such as:
- incremental payment system costs incurred in the process of refusing a payment
 - the cost of providing alerts and notifications, including text messages, emails and letters in respect of refusing a payment
 - the costs of customer service contact initiated by the customer over the telephone, through digital channels and in branches as a result of refusing a payment
 - the costs of handling a complaint arising out of refusing a payment
- 8.250D PSPs may take certain infrastructure costs into account when setting the levels of their refused payment fees. A PSP should set its fees so as to recover investments in infrastructure over the expected lifetime of the investment. Infrastructure costs should not be recovered through the refused payment fee unless:
- those costs are wholly referable to refusal of payments (for example if a dedicated IT system is established to process notifications relating to refused payments); or

- the PSP can show a reasonable basis on which to apportion a share of those costs to the refusal of payments under normal accounting principles (for example where an IT system has functionality that is necessary to enable the processing of refused payments, but the same functionality is also utilised for other purposes)
- 8.250E Where a PSP is unable to fully segregate the costs incurred as a result of refusing payments from other costs, for example because the same staff handle customer complaints initiated as a result of a refused payment and other customer contact, the PSP should not include those costs on the calculation of refused payment fees unless it can demonstrate that it has made a fair and reasonable apportionment of the costs between those referable to refused payments and those not so referable.
- 8.250F PSPs should not take into account costs associated with the general operation of their business such as:
- costs of refusing payments that fall outside the scope of the Payment Services Regulations 2017, such as paper cheques
 - fraud detection and prevention (except in so far as this forms part of the PSP's decision process in relation to refusal of payments)
 - costs of complying with regulation (other than regulation in relation to refused payments)
 - collection, recoveries and impairments
 - the provision of statements of account
 - FSCS levies and the FOS general levy (where applicable)
 - general operational and staff expenditure, including the operation of branches or cash machines
 - marketing
- 8.250G The accounting methods or principles used in estimating and apportioning costs should be consistent with those used by the PSP in its general approach to accounting or business planning.
- 8.250H A PSP may undertake the cost allocation exercise on a product-by-product basis, or across multiple product lines. Where an aggregated approach is taken, the PSP should be satisfied that the resulting fee continues to reasonably correspond to the actual costs of refusing payments in each product line.
- 8.250I A PSP that chooses to set a fee below the cost reflective level for a particular product should not recover the costs incurred as a result of refusing payments by customers of that product from customers of other products, if this would result in a fee that no longer reasonably corresponds to the costs of refusing payments for that product.

Annex 3

Abbreviations used in this paper

APR	Annual percentage rate
BAME	Black, Asian and minority ethnic
BCA	Business current account
BCOBS	The Banking: Conduct of Business sourcebook (FCA Handbook)
CBA	Cost Benefit Analysis
CCD	Consumer Credit Directive 2008/48/EC
CONC	The Consumer Credit sourcebook (FCA Handbook)
CP	Consultation Paper
CP18/42	Our December 2018 consultation on overdraft pricing
EAR	Effective annual rate of interest
EIA	Equality Impact Assessment
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
HCCR	High-Cost Credit Review
HCSTC	High-Cost Short Term Credit
PCA	Personal current account
PS	Policy Statement
PSRs	Payment Service Regulations 2017
RPF	Refused payment fee

Implication of EU Withdrawal

We consulted in the CP on the basis that EU law would continue to apply when the rules come into force under a transitional period arising under a withdrawal agreement. We are making the rules on the same basis.

In the event of the UK leaving the EU without a withdrawal agreement, our approach seeks to ensure that our rules capture the same firms and activities as originally proposed. If there is not an implementation period and the passporting regime falls away when the UK leaves the EU, EEA firms who currently passport into the UK and wish to continue operating in the UK will be subject to the temporary permissions regime or the financial services contracts regime** (which covers supervised run-off firms and contractual run-off firms).

In that scenario, we expect to make provision to ensure that firms that would have been within scope of our rules before EU withdrawal will still be subject to them after EU withdrawal. We may need to update our rules to secure this effect, or issue guidance or other clarifications about their scope. We would not expect to re-consult on that change.

* The government has introduced a temporary permissions regime to allow EEA firms which previously passported into the UK to continue operating. If the UK leaves the EU and is not subject to EU law, such firms should notify the FCA (before the UK withdraws from the EU – the precise details about notification are on the FCA website <https://www.fca.org.uk/brexit/temporary-permissions-regime>.) that they wish to obtain a temporary permission under the new temporary permissions regime.

** The government has introduced a Financial Services Contracts Regime to enable EEA former passporting firms who do not enter the temporary permissions regime to wind down their UK business in an orderly fashion. EEA firms which have not obtained temporary permission and which would require UK permission would be subject to the Financial Services Contracts Regime.

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Appendix 1

Made rules (legal instrument)

PERSONAL CURRENT ACCOUNTS AND OVERDRAFTS INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137C (FCA general rules: cost of credit and duration of credit agreements);
 - (3) section 137R (Financial promotion rules);
 - (4) section 137T (General supplementary powers); and
 - (5) section 139A (Power of the FCA 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) 18 December 2019 for Part 1 of Annex A and Part 1 of Annex B; and
 - (2) 6 April 2020 for Part 2 of Annex A and Part 2 of Annex B.

Amendments to the Handbook

- D. The Banking: Conduct of Business sourcebook (BCOBS) is amended in accordance with Annex A to this instrument.
- E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex B to this instrument.

Notes

- F. In Annex B to this instrument, the notes (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Personal Current Accounts and Overdrafts Instrument 2019.

By order of the Board
30 May 2019

Annex A

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

Part 1: Comes into force on 18 December 2019

4 Information to be communicated to banking customers

...

4.4 Further information to be provided about personal current accounts

...

Method and timing of communication

4.4.9 G ...

- (2) Where the *firm's* website or mobile application constitutes or includes a *direct offer financial promotion* in relation to the personal current account, the information required by *BCOBS* 4.4.3R(1) and (2) should have been included in this material in accordance with ~~*BCOBS 2.2A*~~ *BCOBS 2.2B*. If that material is published in such a way that a potential *banking customer* will view it before they commence their application, the *firm* need not communicate it again.

...

...

Information about overdrafts to be made generally available

...

- 4.4.13 G Where the *firm* is subject to *BCOBS* 8.2 (Cost calculator) or ~~*BCOBS 8.4*~~ *BCOBS 8.3* (Eligibility calculator) it will be required to make these tools available, or publish a reference to their availability, alongside the information required to be published under *BCOBS* 4.4.12R (see *BCOBS* 8.2.3R and *BCOBS* 8.3.3R).

Part 2: Comes into force on 6 April 2020

8 Tools for personal current account customers

...

8.4 Alerts

...

Automatic enrolment

- 8.4.3 R (1) Except as otherwise provided for in *BCOBS* 8.4.5R, a *firm* must ensure that in relation to each personal current account held by a *banking customer*, the *banking customer* is, by the date specified in (2), enrolled to receive:

...

- (b) unarranged overdraft alerts in accordance with *BCOBS* 8.4.13R; and
- (c) attempt to overdraw without prior arrangement alerts in accordance with *BCOBS* 8.4.15R; ~~and~~
- (d) ~~where *BCOBS* 8.4.16R applies, the additional alerts required under that rule.~~ [deleted]

...

...

Customising alerts

- 8.4.10 R (1) A *firm* must put in place arrangements that allow a *banking customer* to choose not to receive the alerts required by *BCOBS* 8.4.12R; and *BCOBS* 8.4.13R ~~and *BCOBS* 8.4.16R.~~

...

- 8.4.11 G ...

- (2) The effect of *BCOBS* 8.4.10R(1) and (2) is that a *firm*:
 - (a) need not allow a *banking customer* to opt out of receiving attempt to overdraw without prior arrangement alerts; and
 - (b) may offer a combined opt out for attempt to overdraw without prior arrangement alerts and unarranged overdraft alerts, and not offer an independent opt out for each of these alerts.

A banking customer should be able to opt out of arranged overdraft alerts, ~~or any additional alerts required under *BCOBS* 8.4.16R,~~

regardless of the other alerts the banking customer chooses to receive.

...

...

~~Additional alerts where there are multiple arranged overdraft limits~~

- 8.4.16 R (1) ~~This rule applies to a firm in relation to an authorised non-business overdraft agreement where the terms of that agreement provide for very significantly different levels of charge for credit in respect of different tiers of drawdown under the facility, other than where one of the tiers is free of charge.~~
- (2) ~~Where this rule applies, the firm must send an alert to the banking customer if the firm:~~
- (a) ~~knows based on information available to it that the banking customer's personal current account has entered a different tier of drawdown under the facility where very significant additional costs are associated with that tier of drawdown; or~~
 - (b) ~~is reasonably able to determine that, taking into account information it has access to on transactions due to be settled, the circumstances in (a) will occur that day in the absence of:~~
 - (i) ~~action by the banking customer; or~~
 - (ii) ~~a transaction other than those the firm is aware of.~~
- (3) ~~The alert must communicate to the banking customer in plain simple language:~~
- (a) ~~the reason why the alert has been sent;~~
 - (b) ~~that the banking customer has incurred or may incur charges; and~~
 - (c) ~~that the banking customer has a period of time during which they have an opportunity to take action to avoid or reduce charges, and specify:~~
 - (i) ~~the actions which may be taken; and~~
 - (ii) ~~the time by which the banking customer must take such action to reduce or avoid the charge or charges. [deleted]~~

General provisions about the timing and content of alerts

- 8.4.17 R Where a firm has sent an alert under BCOBS 8.4.12R to ~~8.4.16R~~ 8.4.15R it is not required to send a further alert in respect of the same personal current

account under the same *rule* unless, since the last alert under that *rule* was sent:

...

- (5) in respect of alerts sent under *BCOBS* 8.4.15R, the obligation to send the alert arises because of a further attempt to enter unarranged overdraft; .
- (6) ~~in respect of alerts sent under *BCOBS* 8.4.16R(2)(a), any arranged overdrawing within the tier of drawdown that significant additional costs are associated with has been repaid; and [deleted]~~
- (7) ~~in respect of alerts sent under *BCOBS* 8.4.16R(2)(b), either:~~
 - (a) ~~the personal current account did not enter the tier of drawdown that significant additional costs are associated with on the *day* the alert was sent; or~~
 - (b) ~~the personal current account entered that tier of drawdown but any arranged overdrawing within that tier has been repaid. [deleted]~~

8.4.18 R ...

- (2) Where the obligation to send an alert or alerts is brought about by one or more scheduled payments, the *firm* must:

...

- (b) where the alert is required under *BCOBS* 8.4.12R ~~or *BCOBS* 8.4.16R~~, send an alert no later than 12:00 midday on the day when the obligation to send the alert arises; and

...

...

Annex B

Amendments to the Consumer Credit sourcebook (CONC)

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

Part 1: Comes into force on 18 December 2019

Insert the following new text after CONC 5B (Cost cap for rent-to-own agreements). The text is not underlined.

5C Note regarding Chapter 5C

Note: a new Chapter 5C, as added by the Personal Current Accounts and Overdrafts Instrument 2019 (FCA 2019/71), comes into force on 6 April 2020.

5D Overdraft repeat use

5D.1 Purpose and application

Purpose

- 5D.1.1 R (1) In this chapter, “repeat use” refers to a pattern of overdraft use where the frequency and depth of use may result in high cumulative charges that are harmful to the *customer* or indicate that the *customer* is experiencing or at risk of financial difficulties.
- (2) The expressions “arranged overdraft”, “excluded account”, “personal current account”, “private bank” and “unarranged overdraft” have the same meaning as set out at *CONC 5C*.
- 5D.1.2 G The purpose of this chapter is to require *firms* to:
- (1) monitor *customers*’ patterns of overdraft use;
 - (2) identify *customers* with patterns of repeat use; and
 - (3) take appropriate steps with the aim of changing such patterns of use.

Who and what?

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

Where?

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

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

- 5D.2.1 R A *firm* must establish, implement and maintain clear and effective policies, procedures and systems to:
- (1) monitor and review periodically the pattern of drawings and repayments of each of its *customers* under an arranged overdraft or an unarranged overdraft, and other relevant information held by the *firm*; and
 - (2) identify, by reference to an appropriate collection of factors, any *customers* in respect of whom there is a pattern of repeat use, and then sub-divide those *customers* into the following two categories:
 - (a) *customers* in respect of whom there are signs of actual or potential financial difficulties;
 - (b) all other *customers* who show a pattern of repeat use (that is, all *customers* within *CONC* 5D.2.1R(2) who are not in category (a)).
- 5D.2.2 R The *rules* in *CONC* 5D.2.1R(1) and (2) do not apply where the *firm* is already in the process of intervening in respect of the *customer's* overdraft use in accordance with *CONC* 5D.3.
- 5D.2.3 G (1) The policies, procedures and systems referred to in *CONC* 5D.2.1R should, having regard to the nature, scale and complexity of the *firm's* *consumer credit lending* activity in relation to overdrafts, enable the *firm*, at regular intervals, to pro-actively look back over an appropriate period at patterns of overdraft use.
- (2) A *firm* may decide the frequency with which it reviews previous overdraft use, and the length of the preceding period of overdraft use that

it considers when doing so, provided that the *firm* can demonstrate that its policies, procedures and systems are effective in promptly identifying *customers* who are within CONC 5D.2.1R(2)(a) or (b).

- (3) CONC 5D.2.1R does not specify the frequency, duration or amount of drawings that may constitute repeat use. *Firms* have discretion, therefore, to tailor the policies, procedures and systems required by CONC 5D.2.1R to their specific business circumstances. If a *customer* has become or remained overdrawn in every *month* over the preceding 12-month period, it is likely that the *customer* will be within CONC 5D.2.1R(2)(a) or (b). It is also likely, however, that there will be other patterns of drawings in fewer numbers of *months* that are caught by CONC 5D.2.1R(2)(a) or (b). There need not necessarily be drawings under an overdraft in consecutive *months* in order for use to be properly treated as repeat use. Conversely, there may be small and temporary drawings, even in consecutive *months*, that are neither indicative of actual or potential financial difficulties nor the cause of high cumulative charges.
- (4) When determining whether there is a high cumulative charge for overdraft use which may be harmful, the *firm* should consider the total amount of the combined charges both in absolute terms and relative to the *customer's* financial circumstances, where known.
- (5) Where there is a pattern of repeat use of an overdraft associated with a personal current account, features of that use and other factors which may be a sign of actual or potential financial difficulties include:
 - (a) one or more of the matters set out in CONC 1.3.1G(1) to (7) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
 - (b) an upward trend in a *customer's* use of the overdraft over time, having regard to one or both of the following:
 - (i) the number of *days* of use per *month*; and
 - (ii) the value of the *customer's* borrowing.
 - (c) changes to the regular credits or debits to the personal current account, which may indicate a fall in disposable income or increased expenditure;
 - (d) use of other products which may indicate a fall in disposable income or growing indebtedness (for example, a reduction in the balance of a savings account, or an increase in the outstanding balance on another *credit* product) of which the *firm* is aware or ought reasonably to be aware from information in its possession;
 - (e) the use of an unarranged overdraft associated with the personal current account, especially if becoming larger, more sustained or more frequent over time;

- (f) the incidence of refused payments in relation to the personal current account, especially if there is a rise in the number or frequency of refused payments over time;
 - (g) information provided by the *customer* that indicates the *customer* is in, or is likely to experience, financial difficulties.
- (6) A *customer* may in fact be in actual or potential financial difficulties even if none of the factors described above is present, so the *customer's* response to the *firm's* initial intervention will be important for determining the appropriate next steps.
- (7) When a *firm* is first implementing policies, procedures and systems to identify *customers* in respect of whom there is a pattern of repeat use, the *firm* should give priority to identifying those *customers* who are vulnerable and experiencing, or at risk of, financial difficulties, in circumstances where prioritisation is appropriate in the light of the scale and complexity of the *firm's consumer credit lending activity* in relation to overdrafts.

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

- 5D.3.1 R (1) This *rule* applies where a *firm*:
- (a) identifies that a *customer* has a pattern of repeat use within the meaning of *CONC 5D.2.1R(2)(b)*;
 - (b) assesses that the *customer* is likely to continue that pattern of use; and
 - (c) does not consider, acting reasonably, that the *customer* is one in respect of whom there are signs of actual or potential financial difficulties.
- (2) The *firm* must communicate with the *customer* (“the first communication”) in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) highlighting the *customer's* pattern of overdraft use and indicating that the *customer* should consider whether it is resulting or may result in high avoidable costs.
- (3) The *firm* must continue to monitor and review the *customer's* pattern of overdraft use after the first communication, and if after a reasonable period the pattern of use continues to be within *CONC 5D.2.1R(2)(b)*, the *firm* must further communicate with the *customer* (“the second communication”), reminding the *customer* of the content of the first communication or reiterating that content.
- (4) The *firm* must continue to monitor and review the *customer's* pattern of overdraft use after the second communication, and if the pattern of use

continues to be within *CONC 5D.2.1R(2)(b)*, the *firm* must continue to communicate with the *customer* in similar terms or for a similar purpose at least annually until such time as the pattern of use ceases to be within *CONC 5D.2.1R(2)(b)*.

- 5D.3.2 R (1) This *rule* applies where a *firm* identifies that a *customer*:
- (a) has a pattern of repeat use within the meaning of *CONC 5D.2.1R(2)(a)*; and
 - (b) is one in respect of whom there are signs of actual or potential financial difficulties.
- (2) The *firm* must communicate with the *customer* in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) highlighting the *customer*'s pattern of overdraft use and indicating that the *customer* should consider whether it is resulting or may result in high avoidable costs. The *firm* must encourage the *customer* to contact the *firm* to discuss their situation and explain that doing nothing could make things worse. The *firm* must also provide contact details for *not-for-profit debt advice bodies*.
- (3) If after a reasonable period the *customer* has not contacted the *firm* and the *customer*'s pattern of use continues to be within *CONC 5D.3.2R(1)*, the *firm* must take reasonable steps to contact the *customer* to discuss their situation.
- (4) In discussions under (2) or (3) (which need not be on a single occasion), the *firm* must seek to explore the reasons for the *customer*'s pattern of overdraft use, as well as the reasons for the *customer*'s actual or potential financial difficulties, and what (if anything) the *customer* is doing, or intends to do, to address those issues.
- (5) If appropriate, in the light of the information gathered under (4), the *firm* must:
- (a) identify and set out suitable options designed to help the *customer*:
 - (i) to reduce their overdraft use over a reasonable period of time; and
 - (ii) to address their actual or potential financial difficulties, in such a way that does not adversely affect the *customer*'s financial situation; and
 - (b) explain that, if the *customer* fails to engage in the discussion or fails to take appropriate action to address the situation, one of the possible consequences is that the *firm* may need to consider the suspension or removal of the overdraft facility or a reduction in

the credit limit.

- (6) If the *customer* declines to contact the *firm* in response to the communication in (2) and to respond to attempts by the *firm* to contact them under (3), or to take reasonable steps to take forward an appropriate option under (5) or to otherwise address the situation, the *firm* must after a reasonable period consider whether to continue to offer the overdraft facility and whether to reduce the credit limit.
 - (7) Sub-paragraph (6) does not apply if the suspension or removal of the overdraft facility or a reduction in the credit limit would cause financial hardship to the *customer*.
- 5D.3.3 G (1) The purpose of *CONC* 5D.3 is to require a *firm* to intervene in an appropriate and proportionate manner where it detects repeat use of an overdraft with the aim of reducing that use and improving the *customer's* financial situation. A *firm* should keep in mind, when doing so, the principle that an overdraft is not generally suitable for long-term use that results in a high total cost burden, as well as the need to pay due regard to the interests of its *customers* and treat them fairly in accordance with *Principle* 6.
- (2) *CONC* 5D.3 does not specify a particular form of words to be used in communications with repeat overdraft users, and *firms* have discretion to tailor the language and tone of those communications to the circumstances of the individual *customer*.
 - (3) For the purposes of *CONC* 5D.3.2R(3), “reasonable period” is unlikely to be longer than one *month*.
 - (4) Options that a *firm* could identify for the purposes of *CONC* 5D.3.2R(5)(a) may include, where assessed as appropriate for the *customer*:
 - (a) advice on budgeting and money management, for example adjusting payment dates or setting up alerts;
 - (b) providing contact details for *not-for-profit debt advice bodies* and other relevant bodies (for example, one providing advice on budgeting or money management), and encouraging the *customer* to contact one of them;
 - (c) the provision by the *firm* to the *customer* of alternative *credit* on more favourable terms (for example a fixed-sum loan repayable by instalments), provided that, if this would be accompanied by suspension or removal of an existing *credit* facility, this would not cause financial hardship to the *customer*;
 - (d) forbearance, such as reducing or waiving interest and other charges or (where applicable) allowing additional time to pay, where this does not unduly delay further help to the *customer* or

permit further deterioration of the *customer's* financial position; or

- (e) a reduction in the credit limit or the suspension or removal of the overdraft facility (or reminding the *customer* that they can ask the *firm* to take these steps) provided that such reduction, suspension or removal would not cause financial hardship to the *customer*.
- (5) If an overdraft *customer* has already been identified by a *firm* as being in financial difficulties, and is already being treated with appropriate forbearance by the *firm*, the *rules* in this section do not require the *firm* to do anything which is inconsistent with the treatment that it has already adopted in respect of that *customer*.
- (6) *Firms* are reminded that they should not consider the suspension or removal of the overdraft facility, or a reduction in the credit limit, under *CONC 5D.3.2R(6)* if this would cause financial hardship to a *customer* (*CONC 5D.3.2R(7)*). A *firm* should give careful thought to the potential effect of suspension, removal or reduction on the *customer* and consider these steps as part of a response to repeat use only where the *firm* is confident, on the basis of sufficient information and enquiry, that they would not cause financial hardship in the individual circumstances of the case.

5D.4 Monitoring repeat use strategies

- 5D.4.1 R A *firm* must monitor and periodically review the effectiveness of its policies, procedures and systems under *CONC 5D.2.1R*, and update or adjust them as appropriate.
- 5D.4.2 G In assessing and periodically reviewing the effectiveness of its policies, procedures and systems under *CONC 5D.2.1R*, a *firm* should have regard, amongst other matters, to the number of repeat users and size of their overdraft balances before putting in place the procedures required by these *rules*, compared with the number and size following implementation of those procedures. More generally, a *firm* should assess the extent to which it has been able to assist those *customers* who were showing a pattern of repeat use and who could benefit from assistance.

5D.5 Reporting on repeat use of overdrafts

- 5D.5.1 R (1) A *firm* must submit a document to the *FCA* by electronic mail to overdrafts@fca.org.uk, containing a detailed description of the policies, procedures and systems it establishes to comply with:
 - (a) *CONC 5D.2.1R*;
 - (b) *CONC 5D.3.2R*; and
 - (c) *CONC 5D.4.1R*

no later than the date on which the *firm* becomes subject to *CONC 5D*.

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

Amend the following as shown.

TP 8 Other transitional provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
...					
<u>4</u>	<u>CONC 5D.1.1R(2)</u>	<u>R</u>	<p>The expressions in <u>CONC 5D.1.1R(2)</u> have the following meaning:</p> <p>(1) <u>An “arranged overdraft” is the running-account facility provided for in an authorised</u></p>	<u>18 December 2019 to 6 April 2020</u>	<u>18 December 2019</u>

non-business overdraft agreement that is a regulated credit agreement.

- (2) An “excluded account” is a personal current account that is offered on terms that:
- (a) an agreement which provides authorisation in advance for the customer to overdraw on the account cannot arise; and
- (b) either:
- (i) the account cannot become overdrawn without prior arrangement ; or
- (ii) no charge is payable (by way of interest or otherwise) if the account becomes overdrawn without prior arrangement ; and
- (c) no charge is payable where the firm refuses a payment due to

lack of funds.

(3) A “personal current account” means an account, other than a current account mortgage, which is a payment account within the meaning of the *Payment Accounts Regulations*.

(4) A “private bank” is a bank or building society, or an operationally distinct brand of such a *firm*, over half of whose personal current account customers each had throughout the previous financial year net assets with a total value of not less than £250,000. For this purpose:

(a) net assets do not include:

(i) the value of the *customer’s* primary residence or any loan secured on that residence;

(ii) any rights of the *customer* under a qualifying contract of insurance within the

meaning of the *Regulated Activities Order*; and

(iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the *customer* or on retirement, and to which the *customer* (or the *customer's* dependents) are, or may be, entitled; and

(b) “previous financial year” means the most recent period of one year ending with 31 March.

(5) An “unarranged overdraft” is a *regulated credit agreement* that arises as a result of:

(a) a personal current account becoming overdrawn in the absence of an arranged overdraft; or

			(b) <u>the firm making available to the customer funds which exceed the limit of an arranged overdraft.</u>		
<u>5</u>	<u>CONC 5D.1.1R(2)</u>	<u>G</u>	<u>CONC 5D.1.1R(2) provides that the expressions referred to in that rule are to have the meaning set out at CONC 5C. Since CONC 5D comes into force before CONC 5C comes into force, CONC TP 8.4 provides that the expressions are to have the meaning set out in that transitional provision (which are identical to the meaning given to the expressions in CONC 5C) until CONC 5C comes into force.</u>	<u>18 December 2019 to 6 April 2020</u>	<u>18 December 2019</u>

Part 2: Comes into force on 6 April 2020

3 Financial promotions and communications with customers

...

3.1 Application

...

Who? What?

...

- 3.1.8 G CONC 3.1.7R(1) does not enable detailed information to be given about credit available from the firm. Firms should note that the image advertising exclusion in CONC 3.1.7R(1) is subject to compliance with the rules specified in (2), including the rules which require the inclusion of a representative APR in specified circumstances (although the rules in CONC 3.5.9R about the wording that must accompany a representative APR do not apply to image advertising). A name or logo may trigger the requirement to include a representative APR. Firms should not include any information not referred to in CONC 3.1.7R(1)

and should avoid the use of names, logos or addresses, for example, which attempt to convey additional product or cost-related information.

...

3.5 Financial promotions about credit agreements not secured on land

...

Representative example

3.5.5 R ...

(7) *A financial promotion for an authorised non-business overdraft agreement provided by a firm of a type listed in CONC 5C.1.2R(2) is not required to include a representative APR.*

[**Note:** regulation 5(5) of CCAR 2010]

Guidance on the representative example

3.5.6 G ...

(1C) (a) The guidance in this provision is relevant to the calculation of an APR for an authorised non-business overdraft agreement which is a necessary first step when calculating the representative APR in a financial promotion for the authorised non-business overdraft agreement. It is, therefore, also relevant to the calculation of the representative APR in a financial promotion for an authorised non-business overdraft agreement.

(b) This guidance relates to a situation where the terms and conditions that apply to an authorised non-business overdraft agreement provide that no interest or other charges are payable in relation to a drawing (authorised in advance) up to a specified amount (including in circumstances where the drawdown exceeds the specified amount). This is sometimes referred to as a “fee-free amount”.

(c) Firms are reminded that CONC 5C.2.1R(7) prohibits certain types of fee-free amounts in relation to overdrafts where the benefit of the fee-free amount is liable to be lost in certain circumstances.

(d) (i) For the purposes of calculating the total charge for credit and the APR, CONC App 1.2.5R (Assumptions for calculation) sets out various assumptions. A number of these assumptions apply “where necessary” to deal in a consistent and comparable way with factors that are not certain at the time the total charge for credit or APR is calculated.

(ii) Where, however, the terms of a permissible fee-free

amount that apply to an *authorised non-business overdraft agreement* are known at the time the *APR* is calculated (and the incidence of the benefit of the fee-free amount is certain if the overdraft is used), the *APR* calculation should reflect those terms. In that situation, it is unlikely to be necessary to make the assumption that the fee-free amount does not exist under *CONC App 1.2.5R*.

- (1D) (a) (i) This *guidance* is relevant to whether to include account fees in the calculation of the *APR* for an *authorised non-business overdraft agreement*. The type of account fee this *guidance* is intended to address is a periodic charge a *customer* is required to pay in order to obtain and maintain access to a personal current account that has an overdraft facility.
- (ii) *CONC App 1.2.3R* (Total charge for credit) provides that the costs of maintaining an account recording both payment transactions and drawdowns are included in the *total cost of credit to the borrower*. There is an exception to this *rule* (see *CONC App 1.2.3R(3)*) where: “(a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the *regulated credit agreement* or in any other agreement with the *borrower*; (b) in the case of an *overdraft facility* the costs do not relate to that facility.”
- (iii) Whether an account fee is required to be included in the calculation of an *APR* depends on whether the *credit* under the associated *authorised non-business overdraft agreement* can be obtained on the same terms without incurring the account fee. If an *authorised non-business overdraft agreement* is not available on the same equally favourable terms without the imposition of the fee, that fee is likely to be considered to “relate” to the overdraft facility.
- (b) The following are examples of situations where it is likely that an account fee should be included in the calculation of the *total charge for credit* and the *APR* for an *authorised non-business overdraft agreement*.
- (i) A personal current account that is subject to an account fee, one of the features of which is an arranged overdraft facility with more favourable terms (for example, a lower interest rate) than those offered on accounts that do not require the payment of an account fee.
- (ii) A *firm* that offers personal current accounts with associated arranged overdraft facilities in respect of all of which there

is an account fee.

- (c) A firm may offer a “packaged bank account” that is a composite product with a number of constituent elements, one of which is an overdraft facility, but others of which are different services. If there is a fee for an optional non-overdraft element of the package that the customer can avoid by choosing not to have that element of the package, and the customer can still have the overdraft element of the package on the same terms, that avoidable fee should not be included in the APR calculation.

...

- (7) Other than in the case of an authorised non-business overdraft agreement provided by a firm of a type listed in CONC 5C.1.2R(2), where a financial promotion for an authorised non-business overdraft agreement is required to include a representative example, one of the items that must be included in the example is the representative APR.

Other financial promotions requiring a representative APR

3.5.7 R ...

- (1A) A financial promotion which states that a cash sum is available for opening an account, other than a current account mortgage, which is a payment account within the meaning of the Payment Accounts Regulations and which does not refer to the availability of credit under an authorised non-business overdraft agreement in connection with that account must not be regarded as including an incentive to apply for credit or to enter into an agreement under which credit is provided for the purposes of (1)(c).

...

- (3) This rule does not apply to a financial promotion:
- (a) for an authorised non-business overdraft agreement provided by a firm of a type listed in CONC 5C.1.2R(2); or

...

3.5.8 G ...

- (6) CONC 3.5.7R applies to a firm with respect to a financial promotion for an authorised non-business overdraft agreement except a firm of a type listed in CONC 5C.1.2R(2).

Annual percentage rate of charge

3.5.9 R In a financial promotion:

...

- (2) where an *APR* is subject to change it must be accompanied by the word “variable”; ~~and~~
- (3) the *representative APR* must be accompanied by the word “representative”; and
- (4) where the *financial promotion* is:
- (a) in writing; and
- (b) for an *authorised non-business overdraft agreement*,
- the *representative APR* must be accompanied by the following information:
- (c) a statement as follows:
- “How does our overdraft compare?”; and
- (d) wording, in plain and intelligible language, that explains to *customers* that the purpose of a *representative APR* is to enable *customers* to compare the costs associated with different *credit products*; and

this information must be given reasonable prominence and be in sufficiently close proximity to the *representative APR* to make it reasonably apparent to *customers* that the relevant wording relates to the *representative APR*.

[**Note:** regulation of *CCAR 2010*]

- 3.5.9A G *CONC 3.5.9R(4)* applies only to *financial promotions* that are in writing. In accordance with *GEN 2.2.14R*, this means *financial promotions* that are in legible form and capable of being reproduced on paper, irrespective of the medium used. The rule does not, therefore, apply to a *financial promotion* communicated by means of television or radio broadcast.

Delete the following text as shown.

~~5C~~ **~~Note regarding Chapter 5C~~**

~~**Note:** a new Chapter 5C, as added by the Personal Current Accounts and Overdrafts Instrument 2019 (FCA 2019/71), comes into force on 6 April 2020.~~

Insert the following new content after *CONC 5B* (Cost cap for rent-to-own agreements). The text is not underlined.

5C Overdraft pricing**5C.1 Application and purpose**

Purpose

5C.1.1 G The purpose of this chapter is to:

- (1) require *firms* to implement and maintain overdraft charging structures that are simple, transparent and capable of easy comparison; and
- (2) forbid *firms* from obliging a *customer* to pay a rate of interest for an unarranged overdraft which exceeds the rate of interest for an arranged overdraft that is relevant to that *customer*.

Who and what?

5C.1.2 R (1) Subject to (2), this chapter applies to a *firm* with respect to *consumer credit lending* and connected activities in relation to arranged overdrafts and unarranged overdrafts associated with personal current accounts.

(2) This chapter does not apply to:

- (a) a *firm* if all personal current accounts provided or offered by the *firm* are excluded accounts;
- (b) a *firm* in respect of any personal current account which may be used for a currency other than a currency of the *United Kingdom*;
- (c) a private bank; or
- (d) a *credit union*.

Where?

5C.1.3 R This chapter applies to a *firm* with respect to activities carried on from an establishment maintained by it in the *United Kingdom*.

5C.2 Charges for overdrafts to be interest rates

5C.2.1 R (1) A *firm* must not:

- (a) enter into an agreement with a *customer* that provides for an arranged overdraft charge or an unarranged overdraft charge; or
- (b) impose on a *customer* an arranged overdraft charge or an unarranged overdraft charge,

unless the conditions in (2) to (7) are satisfied.

- (2) The charge must be a rate of interest expressed as a percentage applied on an annual basis to the relevant balance of arranged overdraft or unarranged overdraft (as the case may be).
- (3) The rate of interest that applies to any given balance of arranged overdraft relating to a personal current account must either be zero or the same as the rate of interest that applies to any other balance of arranged overdraft in respect of that personal current account.
- (4) The rate of interest that applies to any given balance of unarranged overdraft relating to a personal current account must either be zero or the same as the rate of interest that applies to any other balance of unarranged overdraft in respect of that personal current account.
- (5) A *firm* must not require a *customer* to pay more than one arranged overdraft charge or more than one unarranged overdraft charge arising out of the same event.
- (6) Where a *customer* has an arranged overdraft, in relation to a personal current account, to which a rate of interest above zero applies, any unarranged overdraft charge imposed on the *customer* in relation to that personal current account must also consist of a rate of interest computed, structured and presented in an identical manner (although the level of the rate of interest that applies to the unarranged overdraft may be lower).
- (7) If, in relation to an overdraft, a *firm* indicates to a *customer* that no interest is payable on the overdraft balance, or a tranche of the overdraft balance up to a specified amount, the *firm* must not have a contractual right to impose interest referable to that overdraft balance or tranche of the balance if it is exceeded, or depending on whether or not certain conditions are met.

- 5C.2.2 G
- (1) The purpose of *CONC 5C.2.1R* is to permit a *firm* to impose an arranged overdraft charge or an unarranged overdraft charge on a *customer* only if the charge takes the form of an annual rate of interest. Consistent with this, a *firm* is forbidden from imposing on a *customer* a fee for making available an arranged overdraft facility (unless the amount of credit made available under the facility exceeds £10,000).
 - (2) *CONC 5C.2.1R* does not affect an arranged overdraft charge or an unarranged overdraft charge, liability for which accrued before the date on which *CONC 5C.2.1R* came into force. *CONC 5C.2.1R* does affect, however, an arranged overdraft charge or an unarranged overdraft charge liability for which accrued on or after the date on which *CONC 5C.2.1R* came into force, irrespective of whether the arranged overdraft facility was granted or the agreement for the personal current account was made before or after the date on which *CONC 5C.2.1R* came into force.
 - (3) There has to be a single, uniform contractual rate of interest in respect of an individual *customer* that applies to any amount of arranged overdraft balance (other than any part of the balance that is free). This means that a

firm may not have a graduated overdraft charging structure, where different rates of interest apply to specified tiers or bands of arranged overdraft balance, even if a higher band or tier is described as being intended for occasional emergency borrowing, or where lower or higher rates are contingent on certain behaviour, such as making or maintaining certain amounts or frequencies of deposits. A *firm* should not, for instance, calculate an arranged overdraft charge using a rate of interest of 3 per cent per annum if the *customer* borrows £100 by way of arranged overdraft, but use a rate of interest of 5 per cent per annum if the *customer* borrows £300. A *firm* may, however, vary a rate of interest using a contractual power of variation if it is fair, valid and enforceable.

- (4) Similarly, there has to be a single, uniform contractual rate of interest in respect of an individual *customer* that applies to any amount of unarranged overdraft balance (other than any part of the balance that is free), although this rate of interest may be lower than that which applies to an arranged overdraft balance.
- (5) A *firm* is not prevented from providing in the terms and conditions of the overdraft that no interest is payable in respect of arranged overdraft balances or unarranged overdraft balances of up to specified amounts (sometimes described as “fee-free amounts” or “buffer zones”) where permitted by CONC 5C.2.1R. The purpose of CONC 5C.2.1R(7) is to prevent *firms* from offering fee-free amounts or buffer zones that are free only in certain circumstances. An example of a buffer zone that is not permitted is where no interest is payable if an unarranged overdraft balance does not exceed the upper threshold of the buffer zone, but where interest becomes payable in respect of the entire balance (including the part of the balance in the buffer zone) if the *customer* exceeds the threshold.
- (6) A *firm* is not prevented from waiving or reducing overdraft charges (in whole or in part) in appropriate circumstances (for example, where the *firm* is treating a *customer* with forbearance in line with other *rules* in this sourcebook).
- (7) CONC 5C.2.1R does not prohibit the level of the single, uniform contractual rate of interest from differing from *customer* to *customer*, or between personal current accounts for the same *customer*.
- (8)
 - (a) The definitions of an arranged overdraft charge and an unarranged overdraft charge are broad.
 - (b) These definitions capture any charges that arise because a *customer* has used an overdraft, or that are triggered by - or the size of which are affected by - the fact that the personal current account has entered, remains in, or extended, a debit position.
 - (c) If the agreement provides that a charge is payable by a *customer* in exchange for the creation or continuation of an arranged overdraft facility, whether or not the *customer* in fact uses the facility, this

charge is also caught by the definition of an arranged overdraft charge unless the facility has a pre-agreed limit in excess of £10,000. A charge of this sort is often referred to as a “facility fee” and payable periodically, for example annually.

- (d) The definitions of an arranged overdraft charge and an unarranged overdraft charge are not limited to charges that are described as financial consideration for the provision of *credit*. They could include, for example, a charge that is expressed as being referable to the execution of the payment transaction, if the charge is payable only where the transaction results in the account being in an overdrawn position or remaining in such a position. A charge for a payment transaction that is payable irrespective of whether or not the current account has a credit balance or a debit balance is not, however, caught by these definitions.
 - (e) The definitions also do not include charges for operating or maintaining a personal current account (as distinct from charges for granting or continuing to make available an arranged overdraft facility in connection with the account), provided that the incidence and amount of the charges are not affected by whether or how much the *customer* uses an overdraft. A monthly account charge could be an example of such a charge.
- (9) *CONC 5C.2* requires *firms* to use only a rate of interest expressed as a percentage applied on an annual basis to the relevant balance of arranged overdraft or unarranged overdraft. If interest is compounded, *firms* are free to choose the intervals at which they add arranged overdraft charges and unarranged overdraft charges to the principal balance, provided that the same compounding frequency is used in relation to the *customer's* arranged overdraft and unarranged overdraft in respect of the same personal current account.
- (10) *Firms* are reminded of the obligation in *CONC 3.5.3R(1)* to include a representative example (including the *representative APR*) in a *financial promotion* that indicates a rate of interest or an amount relating to the *cost of credit*. *Firms* are also reminded of the obligation in *CONC 3.5.7R(1)* to include in a *financial promotion* a *representative APR* if the *financial promotion* states or includes certain matters. *Firms* are referred to the *guidance* in *CONC 3.5.6G(2)* in relation to how the rate of interest in *CONC 3.5.5R(1)* should be calculated for the purposes of the representative example in *CONC 3.5.3R(1)*.
- (11) In *CONC 5C.2.1R(1)(b)*, “impose” an arranged overdraft charge or an unarranged overdraft charge includes creating the contractual right to receive it, and relying on, or enforcing, the contractual right or purporting to do so.

5C.3 Interest rates for unarranged overdrafts to be no more than the interest rates for arranged overdrafts

- 5C.3.1 R (1) *A firm* must not:
- (a) enter into an agreement with a *customer* that provides for payment by the *customer* of an unarranged overdraft charge; or
 - (b) impose on a *customer*, who enters into an unarranged overdraft, an unarranged overdraft charge,
- unless the charge satisfies the conditions in (2) or (3) (as applicable).
- (2) (a) This sub-paragraph applies where:
- (i) the *customer* concerned has an arranged overdraft in connection with the personal current account; and
 - (ii) interest can become payable on some or all of the balance of that arranged overdraft.
- (b) The rate of interest that applies to the unarranged overdraft must not exceed the rate of interest referred to in (a)(ii) that applies to the arranged overdraft.
- (3) (a) This sub-paragraph applies where (2)(a) does not apply.
- (b) The *firm* must take reasonable steps to identify the type of personal current account provided by it (referred to in this sub-paragraph as the “comparable account”):
- (i) that bears closest resemblance to the personal current account held by the *customer*;
 - (ii) in connection with which an arranged overdraft can arise:
 - (A) of an amount equivalent to the amount of the unarranged overdraft; and
 - (B) that can attract the payment of interest; and
 - (iii) that has been made available to a significant number of its *customers*.
- (c) The rate of interest that applies to the unarranged overdraft must not exceed the relevant rate of interest identified in (d).
- (d) The relevant rate of interest for the purposes of (c) is:
- (i) where there is only one rate of interest that applies to arranged overdrafts connected to the comparable account, that rate; or
 - (ii) where there are two or more rates of interest that apply to arranged overdrafts connected to the comparable account,

the highest of those rates that is imposed on a not insignificant number of the *customers* to whom the account has been made available.

- 5C.3.2 R If a *firm* imposes an unarranged overdraft charge in contravention of *CONC* 5C.3.1R(1)(b), the obligation to pay the charge is unenforceable against the *customer* and the *customer* is entitled to recover any sum paid by, or on behalf of, the *customer* under the obligation imposed.
- 5C.3.3 G (1) The purpose of *CONC* 5C.3.1R is to forbid *firms* from charging a *customer* who borrows a particular amount using an unarranged overdraft facility more than they would have had to pay (disregarding any fee-free amount) if they had borrowed an equivalent amount using their arranged overdraft facility (or, if they do not have an arranged overdraft facility, the highest amount that would have been payable (disregarding any fee-free amount) by a not insignificant number of other *customers* if they had borrowed an equivalent amount under an arranged overdraft facility connected with a comparable personal current account).
- (2) In *CONC* 5C.3.1R(1)(b), *CONC* 5C.3.1R(3)(d)(ii) and *CONC* 5C.3.2R, “impose” an unarranged overdraft charge includes creating the contractual right to receive it, and relying on, or enforcing, the contractual right or purporting to do so (“imposes” and “imposed” should be read accordingly).
- (3) *CONC* 5C.3.1R does not affect an unarranged overdraft charge, liability for which accrued before the date on which *CONC* 5C.3.1R came into force. *CONC* 5C.3.1R does affect, however, an unarranged overdraft charge liability for which accrued on or after the date on which *CONC* 5C.3.1R came into force, irrespective of whether the agreement was made before or after the date on which *CONC* 5C.3.1R came into force.
- (4) A *firm* is not prevented by *CONC* 5C.3.1R from charging a *customer* who borrows using an unarranged overdraft less than it charges the *customer* for using an arranged overdraft facility or from not charging for such borrowing.
- (5) The *rules* in *CONC* 5C.3.1R (other than *CONC* 5C.3.1R(1)(a)) and *CONC* 5C.3.2R are made pursuant to section 137C of the *Act*.

5C.4 Impact of changes to charging structures

- 5C.4.1 R Where a *firm* makes a change to its charging structure or lending policies in response to the *rules* and *guidance* set out in *CONC* 5C, the *firm* must ensure it considers the impact of that change on existing *customers*, including those with large arranged overdraft balances, and, where appropriate, treats such *customers* with forbearance and due consideration.
- 5C.4.2 G (1) A *firm* that makes changes as described in *CONC* 5C.4.1R should, in accordance with *Principle 6*, have due regard to the interests of existing *customers* and treat them fairly. An example of such a change is a

change in a *customer's* overdraft limit.

- (2) *Firms* are reminded that the purpose of the *rules* in CONC 5D is to require *firms* to identify and provide appropriate assistance to *customers* (including existing *customers* at the time CONC 5C becomes applicable) with a pattern of repeat overdraft use.

5C.5 Interpretation

5C.5.1 R In this chapter:

- (1) An “arranged overdraft” is the running-account facility provided for in an *authorised non-business overdraft agreement* that is a *regulated credit agreement*.
- (2) An “arranged overdraft charge” is a charge that a *firm* is contractually entitled to levy:
- (a) (by way of interest or otherwise) and that would not be due but for the fact that the *customer* has borrowed, or borrowed further or continues to borrow, using an arranged overdraft; or
 - (b) exclusively for making available to the *customer* an arranged overdraft with a pre-arranged limit of £10,000 or less, whether or not the *customer* borrows, borrows further or continues to borrow, using the arranged overdraft.
- (3) An “excluded account” is a personal current account that is offered on terms that:
- (a) an agreement which provides authorisation in advance for the *customer* to overdraw on the account cannot arise; and
 - (b) either:
 - (i) the account cannot become overdrawn without prior arrangement; or
 - (ii) no charge is payable (by way of interest or otherwise) if the account becomes overdrawn without prior arrangement; and
 - (c) no charge is payable where the *firm* refuses a payment due to lack of funds.
- (4) A “personal current account” means an account, other than a current account mortgage, which is a payment account within the meaning of the *Payment Accounts Regulations* (see CONC 5C.5.2G(1)).
- (5) A “private bank” is a *bank* or *building society*, or an operationally distinct brand of such a *firm*, over half of whose personal current account customers each had throughout the previous financial year net assets with

a total value of not less than £250,000. For this purpose:

- (a) net assets do not include:
 - (i) the value of the *customer's* primary residence or any loan secured on that residence;
 - (ii) any rights of the *customer* under a qualifying contract of insurance within the meaning of the *Regulated Activities Order*; and
 - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the *customer* or on retirement, and to which the *customer* (or the *customer's* dependents) are, or may be, entitled; and
- (b) “previous financial year” means the most recent period of one year ending with 31 March.

(6) An “unarranged overdraft” is a *regulated credit agreement* that arises as a result of:

- (a) a personal current account becoming overdrawn in the absence of an arranged overdraft; or
- (b) the *firm* making available to the *customer* funds which exceed the limit of an arranged overdraft.

(7) An “unarranged overdraft charge” is a charge (by way of interest or otherwise) that a *firm* is contractually entitled to levy and that would not be due but for the fact that the *customer* has borrowed, borrowed further or continues to borrow, using an unarranged overdraft.

5C.5.2 G (1) The definition of “personal current account” refers to the definition of a “payment account” under the *Payment Accounts Regulations*, that is: “an account held in the name of one or more consumers through which consumers are able to place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers, but does not include any of the following types of account provided that the account is not used for day-to-day payment transactions: savings accounts; credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt; current account mortgages or e-money accounts”. The *FCA* has issued guidance on this definition: see ‘FG16/6 – Payment Accounts Regulations 2015’.

[**Note:** <https://www.fca.org.uk/publications/finalised-guidance/fg16-6-payment-accounts-regulations-2015-definition-payment-account>]

(2) The definition of excluded account captures personal current accounts where there cannot be a pre-arranged overdraft facility, there cannot be an unarranged overdraft to which interest or charges apply and charges

for refusing a payment due to lack of funds cannot arise.

